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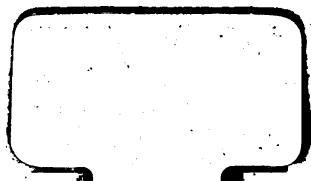
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82 A. 15. 9. Jun.

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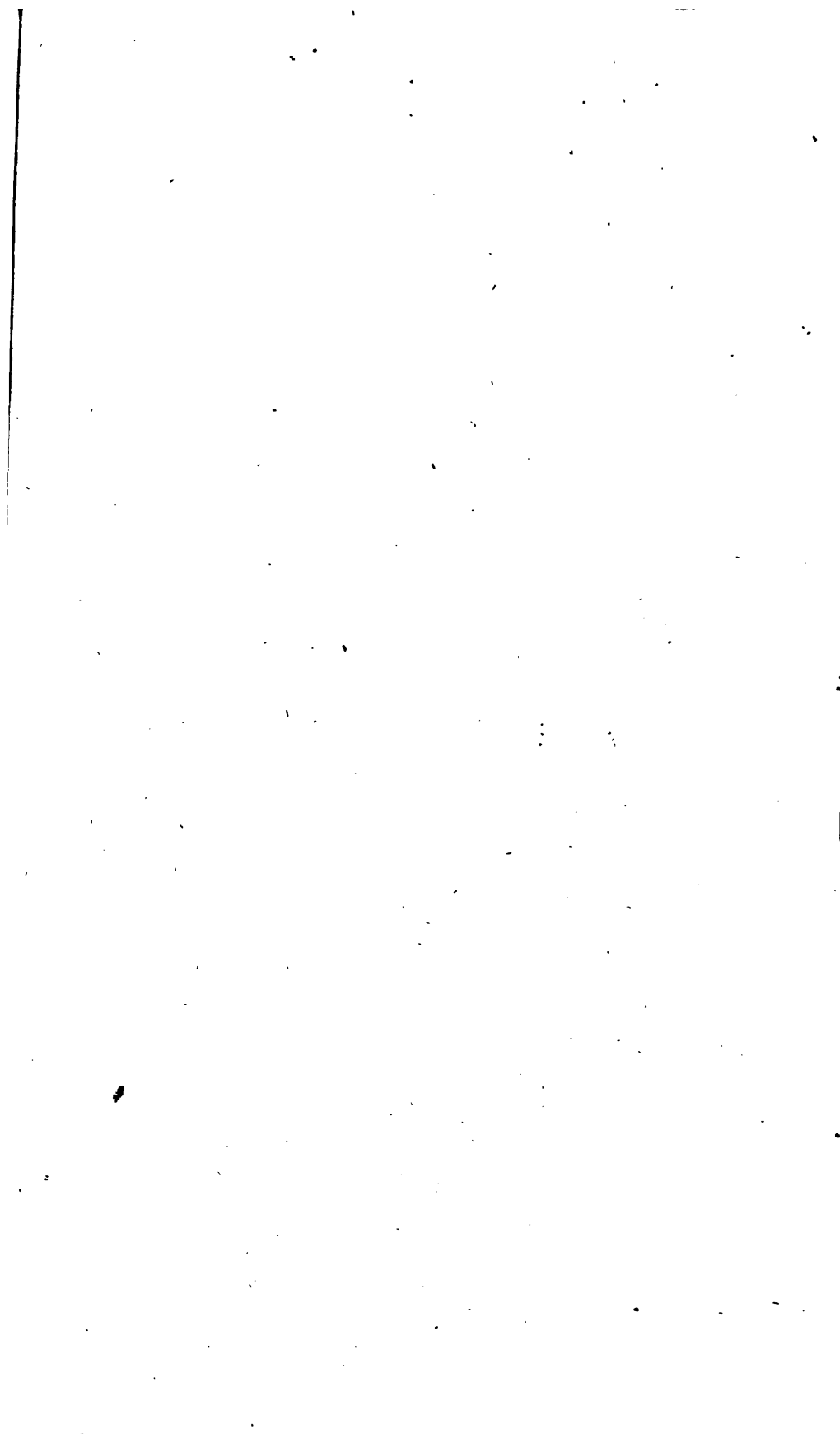
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RULES AND ORDERS
ON THE
PLEA SIDE
OF THE
COURT OF KING'S BENCH.

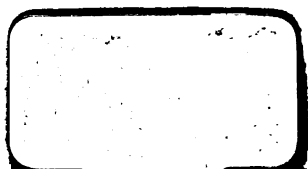
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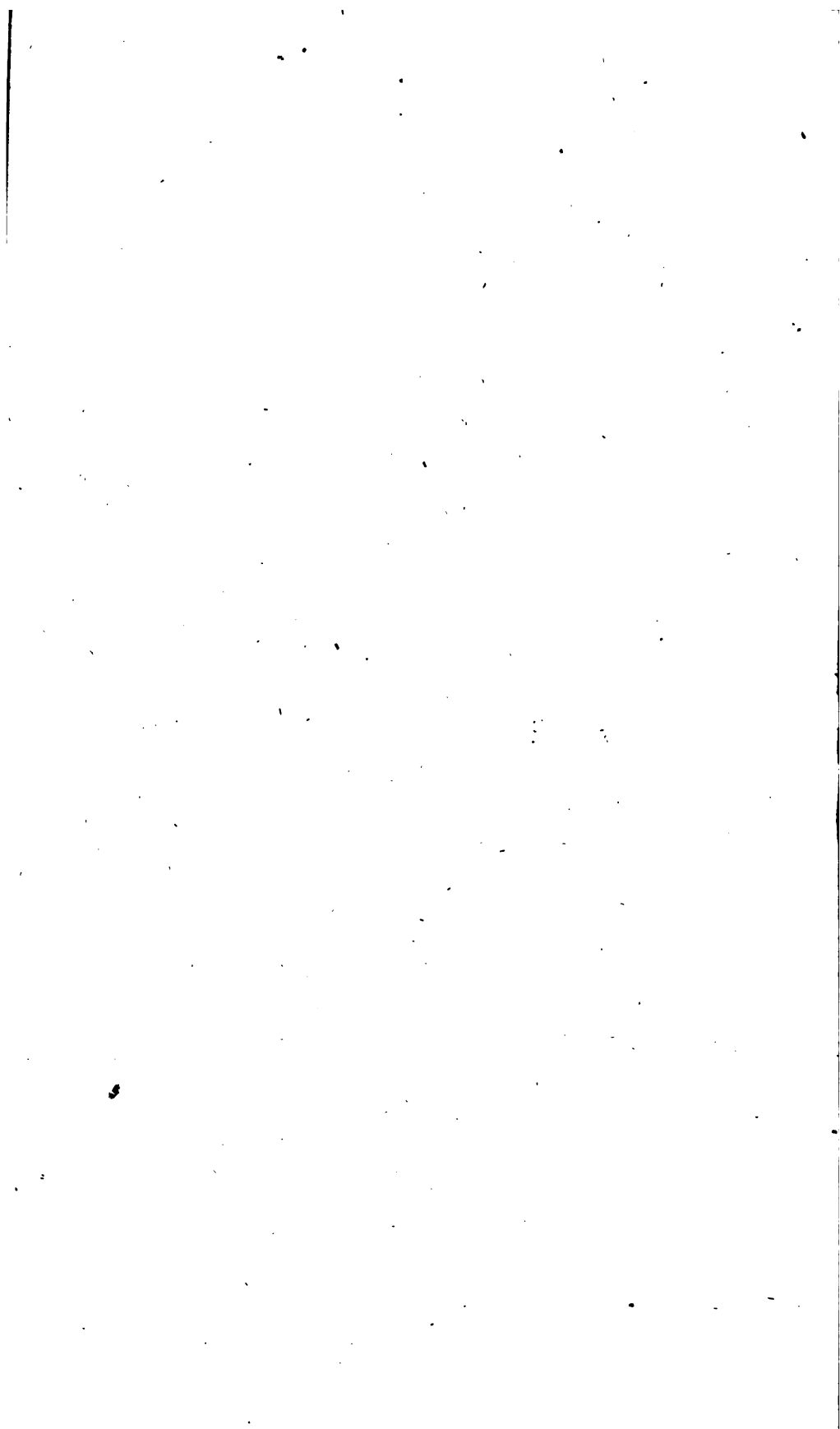
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RULES AND ORDERS
ON THE
PLEA SIDE
OF THE
COURT OF KING'S BENCH.

RULES AND ORDERS
ON THE
• PLEA SIDE
• OF THE
COURT OF KING'S BENCH
BEGINNING
IN EASTER TERM, 1731, AND ENDING
IN TRINITY TERM, 1795.

• WITH
PREFACE AND INDEX.



LONDON :

PRINTED BY W. BULMER AND CO.
FOR J. BUTTERWORTH.
1795.



PREFACE.

By Statute 4 Geo. II. chap. 26th, 1731, it was enacted, That all Proceedings in Courts of Justice in England should be in the English language.

Immediately, the General Rules pronounced by the Court of King's Bench, in matters regarding the Plea side of the Court, were entered in the English language into the books of the Rule Office, commencing with Easter Term, 1731: but the Rules between party and party were not entered in English, till the 25th of March, 1733, at which date the Statute was to take effect: the use of Court

have been rescued from inconceivable confusion, and are now regularly entered into books properly classed and described, was planned upon so perfect a system of order by my immediate Predecessor, that no alteration in its arrangement can, as it appears to me, add to the public convenience.

CHARLES ABBOT.

Rule Office,
Trinity Term,
35 Geo. III. 1795.

Clerk of the Rules
on the Plea side of the Court
of King's Bench.

RULES AND ORDERS

OF THE

COURT OF KING'S BENCH.

Easter Term. 4 Geo. II. 1731.

FOR as much as it is found, that the rule made in Easter term in the fifteenth year of King Charles the Second is ineffectual for the purpose thereby intended; it is Ordered, That from and after the last day of this term, no warrant of attorney executed by any person in custody of any sheriff or other officer, for the confessing of judgment, shall be valid or of any force, unless there be present some attorney on the behalf of such person in custody, to be expressly named by him, and attending at his request, to inform him of the nature and effect of such warrant of attorney, before the same is executed; which attorney shall subscribe his name as a witness to the due execution thereof.

Warrant of attorney for confessing judgment by person in custody not valid unless his attorney be present and witness the execution thereof.

Easter Term. 5 Geo. II. 1732.

Bail to justify within four days after notice of exception in term time or on the first day of next term after like notice in vacation.

It is Ordered, That in every action in this court, where special bail is put in, and an exception is entered against the said bail, and notice of such exception is given in writing to the defendant's attorney, the defendant shall procure his said bail to justify (if the notice be given in term time) within four days next after such notice, or shall add other bail who shall justify within the said four days: but if such exception be entered in vacation time, and notice thereof is given in like manner, the bail put in, or other additional bail, shall justify on the first day of the subsequent term.

Easter Term. 5 Geo. II. 1732.

Bail liable only for the sum sworn to, or any lesser sum recovered.

It is Ordered, That where the plaintiff declares for, or recovers, a greater sum than is expressed in the process on which he declares, the bail shall not be discharged, but be liable for so much as is sworn to, and indorsed on the said process, or for any lesser sum which the plaintiff in such action shall recover; any rule of this court to the contrary notwithstanding.

Easter Term. 5 Geo. II. 1732.

IT is Ordered, That from and after the last day of this term, every writ of scire facias (of which notice shall be given to the defendant or defendants named in such writ) shall be delivered to, or left in the office of, the sheriff to whom directed, four days before the return of such writ, exclusive of the day on which such writ is returnable; and that every first writ of scire facias, on which a nichil shall be returned, shall be delivered to, or left in the office of, the sheriff some time before the return of such writ; and that every writ of alias scire facias shall be delivered to, or left in the office of, the sheriff, four days exclusive before the return of such writ; and every sheriff shall write or indorse on every such writ, the day of the month on which the same is so delivered to him, or left in his office.

Scire facias
how long to
be left with
the sheriff
before the
return.

Sheriff to
indorse the
day when
left.

Trinity Term. 5, 6 Geo. II. 1732.

IT is Ordered, That upon all process to be sued out of this court returnable the first or second

Pleading
within what
time upon
process re-
turnable on
first or se-
cond return
of term.

return of any term, if the plaintiff declares in London or Middlesex, and the defendant lives within twenty miles of London, the declaration shall be delivered, with notice to plead within four days next after the delivery thereof; and the defendant shall plead within the same four days, without any imparlance; and in case the plaintiff declares in any other county, or the defendant lives above twenty miles from London, the declaration shall be delivered, with notice to plead within eight days next after the delivery thereof; and the defendant shall plead within the same eight days, without any imparlance: and in default of pleading as aforesaid, the plaintiff may sign his judgment; any rule of this court to the contrary notwithstanding.

Trinity Term. 5, 6 Geo. II. 1732.

Sheriff to return writ and bring in body within six days after service of rule.

WHEREAS the suitors of this court are greatly delayed in their suits, by sheriffs not duly returning writs directed to them, and in not bringing into court the bodies of defendants taken by virtue of such writs; it is Ordered, That unless every sheriff, from and after the end of this term,

shall return every writ issuing out of this court directed to him, and bring into court the body of every defendant taken by virtue of any such writ, within six days next after the service of a rule of this court upon such sheriff, or his under-sheriff, for the returning any such writ, or bringing into court the body of any such defendant, an attachment shall issue against such sheriff, without giving a day to shew cause against such attachment, as was the course of this court heretofore.

Michaelmas Term. 9 Geo. II. 1735.

WHEREAS no affidavit, sworn before a commissioner in the country, ought to be read in court, or before the master, but every such affidavit ought first to be filed, and a copy thereof made, and such copy read; it is Ordered, That all such affidavits be brought to the clerk of the rules of this court, to be filed in such convenient time, that copies of them may be duly made and delivered to the party filing the same.

Affidavits
sworn in the
country to
be filed with
the clerk of
the rules in
time for co-
pying before
read.

Michaelmas Term. 10 Geo. II. 1736.

*Declaration
by the bye*
can only be
by the plain-
tiff who files
common bail
according to
the statute.

FOR settling and declaring the practice of this court touching declaring by the bye, in cases where the plaintiff in any action or suit hath filed or shall file common bail for the defendant, pursuant to the late act of parliament for preventing frivolous and vexatious arrests; it is Ordered, That in all such cases, the plaintiff in such action or suit, wherein common bail hath been or shall be so filed as aforesaid, may deliver a declaration by the bye against such defendant, in like manner as might have been done by the ancient course of this court; but that no other person, except such plaintiff, is or shall be capable of delivering a declaration by the bye against any defendant, by reason of common bail being so filed by any plaintiff as aforesaid. And for the better distinguishing by whom common bail shall have been filed in any action or suit; it is further Ordered, That from and after the last day of this term, in all cases where common bail shall be filed by the plaintiff for the defendant by virtue of the said act, these words shall be written on the bail piece, viz.

*Common
bail filed ac-
cording to
the statute
to be
indorsed on
the bail
piece.*

" filed according to the statute," or words to the like effect.

Michaelmas Term. 10 Geo. II. 1736.

IT is Ordered, That from and after the last day of this term, upon all process to be issued out of this court returnable the first or second return of any term, where no affidavit shall be made and filed of the cause of action, pursuant to the late act of parliament for preventing frivolous and vexatious arrests, the plaintiff may deliver his declaration de bene esse at the return of such process, with notice to plead in eight days after the delivery thereof; and if the defendant doth not file common bail, and plead within the said eight days, the plaintiff (having filed common bail for such defendant according to the said act) may sign judgment for want of a plea, a rule to plead being duly entered. And it is further Ordered, That from and after the last day of this term, upon all process to be issued and made returnable as aforesaid, where an affidavit shall be made and filed of the cause of action, pursuant to the said act, the declaration may be delivered de bene esse at the

Declaration de bene esse when it may be upon process returnable the first or second return of term, and what time defendant has to plead accordingly as affidavit of the cause of action is or is not filed.

return of such process, with notice to plead in four days after such delivery, if the action is laid in London or Middlesex, and the defendant lives within twenty miles of London; and in eight days, if the action is laid in any other county, or the defendant lives above twenty miles from London; and if the defendant puts in bail, and doth not plead within such time as is respectively before-mentioned, judgment may be signed, a rule to plead being duly entered.

Michaelmas Term. 10 Geo. II. 1736.

Declaration
Copy
to be paid
for before
defendant
plead.

It is Ordered, That from and after the last day of this present term, in all causes depending in this court, the defendant's attorney shall receive and pay for a copy of the declaration; whether the same be delivered by the plaintiff's attorney, or left in the office, before the defendant be permitted to plead.

Trinity Term. 10, 11 Geo. II. 1737.

Circuits.
Writ and
record to be
entered to-
gether.

To prevent delays in the trial of causes in the circuits; it is Ordered, by all the judges of Eng-

land, that in every cause to be tried before them in their respective circuits, the writ and record shall be entered together, and that no record shall be received without the writ.

<i>W. Lee.</i>	<i>E. Probyn.</i>
<i>J. Willes.</i>	<i>J. Comyns.</i>
<i>Ja. Reynolds.</i>	<i>J. Fortescue A.</i>
<i>F. Page.</i>	<i>Wm. Thomson.</i>
<i>Alex. Denton.</i>	<i>Wm. Fortescue.</i>
<i>Law. Carter.</i>	

Trinity Term. 11, 12 Geo. II. 1738.

COMPLAINT having been made to the Lord Chief Justice of this court, by Samuel Billingsley, stationer, that several persons presume to deliver out the rolls of this court without any appointment for that purpose; it is Ordered, That from and after the end of this present Trinity term, no roll or rolls be received and allowed for by the clerk of the treasury of this court, unless the said rolls are marked with the said Samuel Billingsley's mark.

Rolls
to be delivered out only by the person appointed for the purpose.

Michaelmas Term. 14 Geo. II. 1740.

Bail.
Attorney
not to be
bail.

IT is Ordered, That no attorney of this, or any other court, shall be bail in any action or suit depending in this court.

Michaelmas Term. 14 Geo. II. 1740.

Bail.
No sheriff's
officer, &c.
to be bail.

IT is Ordered, That no sheriff's officer, bailiff, or other person concerned in the execution of process, be permitted to be bail in any action or suit depending in this court.

Hilary Term. 14 Geo. II. 1740.

Circuits.
Entering
writs and
records of
nisi prius.

WHEREAS, for regulating trials by nisi prius in the circuits, an order was made by all the judges of England in Trinity term, in the tenth and eleventh years of his present Majesty, "That in every cause to be tried before them in their respective circuits, the writ and record should be entered together, and that no record should be received without the writ;" which order

hath not fully answered the intent thereof; but notwithstanding, many inconveniences do still happen to the suitors, by delaying or putting off the trials of their causes: Now, in order more effectually to prevent these inconveniences for the future;

It is Ordered, by all the judges of England, That no writ and record of nisi prius shall be received at the assizes in any county in England, unless they shall be delivered to be entered with the marshal before the first sitting of the court after the commission day; except in the counties of York and Norfolk, and there the writs and records shall be delivered to, and entered with, the marshal, before the first sitting of the court, on the second day after the commission day; otherwise they shall not be received:

And that every cause shall be tried in the Order of trying causes. order in which it shall be so entered, without any preference or delay; unless it shall be made out to the satisfaction of the judge in open court, that it is impracticable, or inconvenient, so to do; who thereupon may make such order for the trial of the cause so put off, as to him shall seem just:

Lists of
causes.

And it is further Ordered, That a list of the causes, when so entered as aforesaid, shall be made by the marshal, and forthwith fixed up in some public place in the nisi prius court, there to remain during the whole time of the assizes.

W. Lee.

W. Fortescue.

J. Willes.

T. Parker.

E. Probyn.

M. Wright.

F. Page.

Ja. Reynolds.

Law. Carter.

Tbo. Abney.

J. Fortescue A.

Easter Term. 15 Geo. II. 1742.

Ac etiam
to be insert-
ed in writs
or process
upon recog-
nizance of
bail.

WHEREAS, by the rules of this court in actions of debt upon any recognizance of bail on mesne process, the bail are allowed eight days in full term, after the return of the process sued out and served upon any of them, to surrender the defendant in the original action, for the discharging him or themselves from such recognizance; and whereas, by the course of the court the plaintiff suing out a writ in a plea of trespass may declare in any action he thinks fit, which may be a surprise on such bail;

This Court doth therefore Order, That from and after the last day of this term, in all such writs or process to be sued out of this court upon any such recognizance of bail, after the words "*in a plea of trespass,*" there shall be inserted the following clause, "*and also to a bill of the said plaintiff against the said defendant, in a plea of debt upon recognizance, according to the custom of our court before us to be exhibited,*" otherwise the defendant or his attorney shall not be bound to accept of a declaration in debt upon such recognizance.

Easter Term. 15 Geo. II. 1742.

WHEREAS the swearing of affidavits before commissioners authorized to take affidavits in this court, in causes wherein such commissioners are concerned as attornies for the parties on whose behalf such affidavits are made, is and hath been disallowed as irregular, which, with respect to affidavits made of the cause of action before process sued out, in order to hold the defendants to bail, hath been found inconvenient; it is Ordered, That from and after the last day of this term, all

Affidavits
to hold to bail
may be
sworn before a
commissioner
though attorney
for the plaintiff.

affidavits of any cause of action before process sued out to hold defendants to bail, may be sworn before any commissioner authorized to take affidavits in this court; although such commissioner be concerned as attorney for the plaintiff; and shall be deemed to be regularly taken.

Easter Term. 15 Geo. II. 1742.

Detainer
in custody of
the marshal
not
to be with-
out affidavit
of debt filed
with Clerk
of the Rules.

FOR preventing the detainer of prisoners, charged by declarations in the custody of the marshal of the Marshalsea of this court, where the cause of action against such prisoners does not amount to ten pounds; it is Ordered, That from and after the last day of this term, no declaration whereby any prisoner shall be charged in the custody of the marshal, shall be sufficient cause of detaining such prisoner in custody, unless an affidavit, that the plaintiff's cause of action against such prisoner does amount to ten pounds or upwards, shall be first made and filed with the clerk of the rules of this court; and the sum specified in such affidavit shall be indorsed by him, upon such declaration, before leaving thereof with the turnkey.

Michaelmas Term. 17 Geo. II. 1743.

It is Ordered, That from and after the last day of Michaelmas term, 1743, no record or writ of nisi prius be received at any sitting after term in Middlesex, unless the same shall be delivered to, and entered with, the marshal, within two days after the last day of every term :

Nisi prius
Records
when to be
delivered in
London and
Middlesex.

And that no record or writ of nisi prius be received at any sitting after term in London; unless the same shall be delivered to, and entered with, the marshal, the day before the day to which the sittings in London shall be first adjourned :

And that every cause to be tried at nisi prius in London and Middlesex, be tried in the order in which it is entered, (beginning with remanets); unless it shall be made out to the satisfaction of the judge of nisi prius in open court, that there is reasonable cause to the contrary; who thereupon will make such order for the trial of the cause so to be put off, as to him shall seem just.

Causes to be
tried in the
order they
are entered.

Hilary Term. 20 Geo. II. 1746.

*Attachment
of privilege.
A præcipe to
be left with
the signer of
the writs.*

IT is Ordered, That from and after the last day of this term, every attorney of this court who shall sue out any attachment of privilege against any defendants shall leave a præcipe with the signer of the writs, with the defendants' names, not exceeding four in each writ, with the return and day of signing such writ, with the agent's or attorney's name who sued out the same; and all such præcipes shall be entered on the roll, where the præcipes of latitats, and all other writs issuing out of this court are entered; and the officer that signs the writs in this court shall not sign such attachment till a præcipe be left with him for that purpose.

Third day of April, 1747.

*Seal office.
No blanks
to be sealed.*

WHEREAS the fees of the seal office have lately very much decreased, to the manifest prejudice of the patentee and chief justices of the respective courts of King's Bench and Common Pleas; and the same appears for some time past to be in a

great measure owing to the sealing of blank writs, several of which, after sealing them, have been made testatums, and non omittases besides other irregularities practised thereby; it is Ordered, That for the future, no printed blanks, or other writs whatsoever be sealed before the same are regularly made out and filled up.

Michaelmas Term. 30 Geo. II. 1756.

IT is Ordered, That all enlarged rules to shew cause, which were made in the last term, shall be moved before the last week of the present term; unless leave for postponing them shall be particularly applied for and granted; and this rule to prevail hereafter in all future terms in the same manner.

*Rules
Enlarged
when to be
moved.*

Michaelmas Term. 30 Geo. II. 1756.

WHEREAS divers causes, set down in the book kept by the clerk of the papers of this court to be argued by counsel, are frequently adjourned from time to time, at the instance of some or one of

*Causes for
argument
when to be
entered and
argued.*

the parties in such causes, or their attorney or agent, without any previous application or notice to the court, or by consent at the time when they should come on to be argued, which occasions a great expence and grievous delay to the parties, and is likewise an intolerable obstruction to the business of the court ; for remedy thereof for the future; it is Ordered, That from and after the last day of this term, all special causes to be set down by the clerk of the papers of this court to be argued, shall be entered at least four days exclusive of the day of argument ; of which notice shall forthwith be given to the attorney or agent on the other side : and that all such causes shall be argued in the order and course the same stand entered, and shall not be adjourned to any future day by consent or otherwise ; unless the court shall for reasonable cause, verified by affidavit, upon application to be made by either of the said parties their attorney or agent at least two days before the day of argument, otherwise order : and it is further Ordered, That all such causes, remaining undetermined at the end of any term, shall without any new entry be continued in the books kept by the clerk of the papers, to come on the next term in the order and course the same stand.

Trinity Term. 32, 33 Geo. II. 1759.

King's Bench } This Court took into consider-
poor prisoners. } ation the petition of the poor *High-bar*
 prisoners confined on the common side of the pri- *money*
 son of this court, touching the money usually paid into the
 into the box of this court, upon motions and affidavits how
 davits made in court, which the petitioners claim disposed of.
 as due to them:

And, Mr. Athorpe (to whom it had been referred to examine into the matters alleged in the said petition) having this day reported to this court, "That he hath made diligent inquiry into the premises; and that no living witness was upon such inquiry produced on the part of the petitioners, who could give evidence touching the same; and that he had carefully inspected all the books, papers, and writings which could be found relative to the premises; and that upon such inspection and inquiry, it doth not appear that the said money was ever paid to the said poor prisoners, or for their use;" and Mr. Clarke, secondary on the Plea side, having this day informed the court, "That during the time he

“ had been in the said office, and also during the
 “ time his late father, Mr. Giles Clarke (long since
 “ deceased) was in the same office, the said money
 “ hath been constantly paid by the secondary on
 “ the Plea side, into the hands of the junior judge
 “ of this court for the time being, in order to be by
 “ him paid over to the judges of this court in
 “ equal shares, to be disposed of by them, for such
 “ charitable purposes as they in their discretion
 “ should think proper ;” it is Ordered, That the
 said petition be rejected.

Hilary Term. 6 Geo. III. 1766.

*Rules
 Enlarged
 to be fixed
 for peremp-
 tory days
 and
 lists to be
 made thereof.*

IT is Ordered, That every rule, which shall be enlarged to the next subsequent term, shall be fixed to a particular peremptory day; namely, the first five enlarged rules either on the criminal or civil side of the court (as they may happen) for the first day of the next term; the second five for the second day of it; the third five for the third day; and so on, *toties quoties*, to the sixth, seventh, eighth, ninth, tenth, and following days of such subsequent term; and that after every term, there be a list made out and fixed up in the offices,

both on the crown and civil side, of the rules so enlarged, and the particular days when the respective motions are to come on; and that a copy of such lists be delivered to the judges respectively the day before the beginning of every term.

Trinity Term. 6 Geo. III. 1766.

IT is Ordered, That from and after the last day of this present Trinity term, every rule to be made for the sheriff of the county of Middlesex, and the sheriffs of London, to return writs, or bring into court the body or bodies of any defendant or defendants, be made for such sheriff and sheriffs to return such writs, and bring into court the body or bodies of such defendant or defendants, within four days next after the service thereof.

Sheriff
to return
writ, and
bring in bo-
dy within
four days af-
ter service
of rule.

Hilary Term. 8 Geo. III. 1768.

WHEREAS, the habitations of many attornies, practising in this court, resident in and near the cities of London and Westminster, are often very

Attornies
residing in
or near Lon-
don or West-
minster

to
enter their
names and
places of
abode in the
Master's
book.

difficult to be found; whereby it is impracticable duly to serve them with notices, summonses, orders, and rules, to the great delay of the proceedings in this court; for remedy thereof for the future, it is Ordered, That the Master shall forthwith cause to be prepared a proper alphabetical book, for the purposes aftermentioned; and that the same shall be publicly kept at the Master's Office in the King's Bench Walks; to be there inspected by any attorney or his clerk, without fee or reward: and that every attorney practising in this court, and residing in London and Westminster, or within ten miles of the same, shall, before the first day of the next term, enter in such book (in alphabetical order) his name and place of abode, or some other proper place within the cities of London and Westminster where he may be served with such notices, summonses, orders, and rules: and every attorney afterwards to be admitted, and practising and residing as aforesaid, shall upon his admission make the like entry: and as often as any such attorney shall change his place of abode, or the place where he may be so served with notices, summonses, orders, and rules, he shall make the like entry thereof in the said book: and that all notices, summonses, orders, and rules,

•

which do not require a personal service, shall be deemed sufficiently served on such attorney, if a copy thereof shall be left at the place lastly entered in such book with any person resident at or belonging to such place: and if any such attorney shall neglect to make such entry, that then the fixing up of any notice, or the copy of any summons, order, or rule, for such attorney in the said Master's office, shall be deemed a sufficient service, unless the matter be such as shall require a personal service: and it is further Ordered, That a copy of this rule shall be publicly fixed up in the said Master's office, and that another copy thereof shall be also fixed up in the chambers of each of the judges of this court.

Easter Term. 8 Geo. III. 1768.

It is Ordered, That for the future, when any prisoner surrenders or is surrendered to the custody of the Marshal in discharge of his or her bail, under the commitment shall be added, in what state the cause or causes stand at the time of such surrender; if before declaration, "the sum sworn to on the arrest;" if a declaration hath been filed

Prisoner surrendering state of the cause to be added under the commitment.

or delivered, then to the sum sworn to shall be also added, "*declaration filed or delivered,*" "*issue joined,*" or "*interlocutory judgment signed,*" as the case is; if after final judgment in debt, "*the debt and damages;*" in other cases, "*the quantum of the damages.*"

Hilary Term. 15 Geo. III. 1775.

Rules Enlarged. It is Ordered, That all rules enlarged till next term be peremptory; and that six be set down for every day; and the like in every future term.
Six for each peremptory day.

Michaelmas Term. 17 Geo. III. 1776.

Rules Enlarged. It is Ordered, That all rules enlarged till the next term be peremptory; and that eight be set down for every day; and the like in every future term.
Eight for each peremptory day.

Trinity Term. 17 Geo. III. 1777.

IT is Ordered, That attachments shall be absolute in the first instance, only in the three following cases, viz. first, for non-payment of costs on the master's allocatur; secondly, against a sheriff for not obeying a peremptory rule to return a writ, or to bring in the body; thirdly, for contempt of the court in the execution of the process of the court.

Attachment when absolute in the first instance.

Trinity Term. 19 Geo. III. 1779.

IT is Ordered, That a defendant be not allowed oyer of an original writ; and that, if he demand it, the plaintiff may proceed as if no demand had been made.

Oyer of original writ not allowed.

Trinity Term. 22 Geo. III. 1782.

IT is Ordered, That from and after the last day of this term, upon all process to be issued out of this court, returnable before the last return of any

Declaration de bene esse when it may be upon pro-

cess return-
able the last
return of
term : and
what time
defendant
has to plead
according
as affidavit of
the cause of
action is or
is not filed.

term, where no affidavit shall be made and filed of the cause of action, pursuant to the act of parliament for preventing frivolous and vexatious arrests, the plaintiff may file or deliver his declaration de bene esse at the return of such process, with notice, to plead in eight days after the filing or delivery thereof; and if the defendant doth not file common bail, and plead within the said eight days, the plaintiff having filed common bail for such defendant according to the said act, may sign judgment for want of a plea; provided that such declaration be delivered or filed, and notice thereof given four days exclusively before the end of such term, and a rule to plead be duly entered:

And it is further Ordered, That from and after the last day of this term, upon all process to be issued and made returnable as aforesaid, where an affidavit shall be made and filed of the cause of action pursuant to the said act, the declaration may be filed or delivered de bene esse at the return of such process, with notice to plead in four days after such filing or delivery, if the action be laid in London or Middlesex, and the defendant live within twenty miles of London; and in eight days if the action be laid in any other county, or

the defendant live above twenty miles from London: and if the defendant puts in bail, and doth not plead within such times as are respectively above mentioned, judgment may be signed; provided that such declaration be delivered or filed, and notice thereof given four days exclusively before the end of such term, and a rule to plead be duly entered.

Michaelmas Term. 23 Geo. III. 1782.

- It is Ordered, That from and after the last day of this present Michaelmas term, in all actions in which the plaintiff shall proceed against the defendant by special original writ, and shall recover Costs in actions by special original where less than 50l. recovered. less than the sum of fifty pounds; he shall not, on taxing costs, be allowed any more or other costs than he would be entitled to in case he had proceeded by bill; except in such actions in which he could not proceed by bill: or in which any defendant shall be actually outlawed.

Hilary Term. 23 Geo. III. 1783.

Writs of Inquiry.

WHEREAS the writs of inquiry in the city of London and county of Middlesex are now and for several years past have been very numerous, and the present practice of executing them is attended (in the opinion of the present sheriffs) with great inconvenience and injustice to the parties, inasmuch as the writs being brought to the sheriff's office without previous notice, standing juries as well in London as the county (composed of the lowest description of men) have been appointed to try and determine the rights of the parties, by whose ignorance and sometimes influence, great injuries have been done to some of the parties; and whereas the present sheriffs have made several attempts to form and regulate fit juries upon writs of inquiry, but they cannot accomplish it on account of the irregular and uncertain manner of their being brought to the office; for remedy thereof, it is Ordered, That from and after the last day of this term, where any writ of inquiry shall be made or sued out to be executed in the city of London or county of Middlesex, a notice in writing, specifying the nature of the action, and the time and

place, when and where such writ is to be executed, shall be left at the office of the sheriff before whom such writ is intended to be executed, two days at least before the execution thereof.

Hilary Term. 23 Geo. III. 1783.

WHEREAS, a rule was made in this term respecting the executing of writs of inquiry in the city of London or in the county of Middlesex; it is Ordered, That the said rule be repealed: and it is further Ordered, That from and after the last day of this present term, where any writ of inquiry shall be made, or sued out, to be executed in the city of London or in the county of Middlesex, such writ of inquiry shall be left at the office of the sheriff before whom such writ is intended to be executed, the day before the execution thereof.

Writs of inquiry
to be left in
the sheriff's
office the day
before the
execution
thereof.

Hilary Term. 26 Geo. III. 1786.

It is Ordered, That from and after the last day of this term, in all cases where a prisoner is or

Prisoner
in custody
upon mesne
process

how
to be proceed-
ed against
and
when super-
sedeable.

shall be taken, detained, or charged in custody by mesne process hereafter returnable, issuing out of this court, and the plaintiff shall not cause a declaration against such prisoner to be delivered to such prisoner, or to the gaoler or turnkey of the gaol or prison where such prisoner is or shall be detained or charged in custody, before the end of the next term after the return of the process, by virtue whereof such prisoner is or shall be taken, detained, or charged in custody, and (unless the prisoner is or shall be in custody of the marshal) cause an affidavit to be made and filed with the clerk of the rules of this court of the delivery of such declaration, and of the time when, and the person to whom the same was delivered, before the first day of the next term after the delivery of such declaration, the prisoner shall be discharged out of custody by writ of supersedeas, to be granted by this court, or one of the judges thereof, upon filing common bail; unless, upon notice given to the plaintiff's attorney, good cause shall be shewn to the contrary: and in case of a commitment or surrender to the marshal in discharge of bail, after the return of the process and before a declaration delivered, unless the plaintiff shall cause a declaration to be delivered as aforesaid

before the end of the term next after such commitment or surrender shall be made, and due notice of such surrender given, the prisoner shall be discharged out of custody by writ of super-sedeas, to be granted as aforesaid, upon filing common bail; unless, upon notice given to the plaintiff's attorney, good cause shall be shewn to the contrary:

And it is further Ordered, That in all cases *after a declaration delivered* as aforesaid, at the King's Bench, or any other gaol or prison, unless the plaintiff shall proceed to trial or final judgment thereupon within three terms next after such declaration delivered, if by the course of this court the plaintiff can so proceed, of which three terms the term wherein such declaration shall be delivered shall be taken to be one; or in case of a surrender in discharge of bail, after a declaration delivered, unless the plaintiff shall proceed to trial or final judgment thereupon, within three terms next after such surrender and due notice thereof, if by the course of this court the plaintiff can so proceed, of which three terms the term wherein such surrender shall be made shall be taken to be one, the prisoner shall be discharged

*Prisoner
how to be
proceeded
against after
declaration
delivered
and
when super-
sedeable.*

out of custody by writ of supersedeas, to be granted as aforesaid, upon filing common bail ; unless, upon notice given to the plaintiff's attorney, good cause shall be shewn to the contrary : and in all cases after such trial shall be had, or final judgment obtained against any prisoner in the custody of the marshal, or in any other gaol or prison, unless the plaintiff shall cause such prisoner to be charged in execution within two terms next after such trial shall be had or final judgment obtained, of which two terms the term in which such trial shall be had or final judgment shall be obtained shall be taken to be one, in case no writ of error shall be depending nor injunction be obtained for stay of proceedings ; and if any writ of error shall be depending or injunction obtained, then within two terms next after judgment shall be affirmed the writ of error be nonprossed or discontinued, or the injunction dissolved, including the term in which such affirmance of judgment nonpross or discontinuance of the writ of error or dissolution of the injunction shall be obtained, or in case of a surrender in discharge of bail after trial had or final judgment obtained, unless the plaintiff shall cause the defendant to be charged in execution within two terms next after such surrender and due notice

thereof, of which two terms the term wherein such surrender shall be made shall be taken to be one, in case no writ of error shall be depending or injunction obtained for stay of proceedings, and if any writ of error shall be depending or injunction obtained, then within two terms next after judgment shall be affirmed, the writ of error be nonprossed or discontinued, or the injunction dissolved, including the term in which such affirmance of judgment nonpross or discontinuance of writ of error or dissolution of injunction shall be obtained, the prisoner shall be discharged out of custody by supersedeas, to be granted as aforesaid on filing common bail; unless, upon notice given to the plaintiff's attorney, good cause shall be shewn in either of these cases to the contrary:

And it is further Ordered, That in all cases where a prisoner shall be taken or charged in custody by any sheriff or other officer by mesne process of this court, and shall afterwards be removed by writ of *habeas corpus*, and committed thereupon by this court or any of the judges thereof, to the custody of the marshal, the time for the plaintiff's proceeding against such prisoner shall commence and be computed from the pri-

Prisoner
removed by
habeas cor-
pus to cus-
tody of the
marshal:
from
what time
proceedings
against him
shall be com-
puted.

soner's being first taken or detained or charged in custody by virtue of such process :

What form
of agreement
to prevent
supersedeas
shall be valid

And lastly it is Ordered, That no treaty or agreement shall be sufficient cause to prevent any defendant's having the benefit of a supersedeas for want of prosecution, unless the same be in writing signed by the defendant, or his attorney, or some person duly authorized by the defendant, and it be therein expressed, that proceedings are stayed at the defendant's request.

Easter Term. 28 Geo. III. 1788.

*Serjeants'
Inn Hall.*
For what
purposes the
Court of
King's Bench
sits there.

It is Ordered, That the court do sit in Serjeants' Inn Hall in Chancery Lane, every morning during term, from half past eight o'clock till ten, for the purpose of taking justification of bail, and hearing motions of course, and discharging insolvent debtors : and that on Mondays, Fridays, and Saturdays, it do adjourn from Serjeants' Inn to Westminster Hall to transact the usual business ; except the justifying of bail and discharging insolvent debtors, which business is to be transacted at Serjeants' Inn Hall only.

And it is further Ordered, That the bail do attend before half past nine; otherwise they will not be permitted to justify.

Easter Term. 30 Geo. III. 1790.

It is Ordered, That from and after the last day of this term, where short notice of trial is to be accepted in country causes, such notice shall be given at least four days before the commission day, one day exclusive and the other inclusive.

Notice of Trial.
What is short notice in country causes.

Easter Term. 30 Geo. III. 1790.

It is Ordered, That from and after the first day of Trinity term next, the rule made on Friday next after the octave of the purification of the Blessed Virgin Mary, in the sixth year of the reign of King George the First, and all other rules for establishing the rules of the King's Bench prison, shall be and the same are hereby repealed: And it is further Ordered, That from and after the said first day of Trinity term next, the rules of the King's Bench prison shall be comprised

King's Bench prison.
Limits of the Rules.

within the bounds following; exclusive of the public houses hereinafter mentioned; That is to say, from Great Cumber Court in the parish of Saint George the Martyr in the county of Surry, along the north side of Dirty Lane and Melancholy Walk, to Blackfriars Road, and along the western side of the said road to the Obelisk; and from thence along the south-west side of the London Road round the direction post in the centre of the roads, near the public house known by the sign of the Elephant and Castle; and from thence along the eastern side of Newington Causeway to Great Cumber Court aforesaid: And it is also Ordered, That the New Gaol Southwark, and the highway, exclusive of the houses on each side of it, leading from the King's Bench prison to the said New Gaol shall be within and part of the said rules: And it is lastly Ordered, That all taverns, victualling houses, alehouses, all wine vaults, and houses or places licenced to sell gin, or other spirituous liquors, shall be excluded out of, and deemed no part of the said rules.

Easter Term. 30 Geo. III. 1790.

IT is Ordered, That from and after the first day of Trinity term next, no prisoner in the King's Bench prison, or within the rules thereof, shall have or be entitled to have day rules, above three days in each term: And it is further Ordered, That every such prisoner having a day rule, shall return within the walls or rules of the said prison, at or before nine o'clock in the evening of the day for which such rule shall be granted.

*King's
Bench prison
day rules.*

Easter Term. 30 Geo. III. 1790.

IT is Ordered, That from and after the essoin day of the next Trinity term, the clerk of the bails of this court shall mark the bail pieces numerically as they are received.

*Bail pieces
to be mark-
ed numeri-
cally.*

Trinity Term. 30 Geo. III. 1790.

Writ
to be indor-
sed with the
day and hour
of filing.

IT is Ordered, That from and after the last day of this term, the custos brevium of this court shall indorse upon every writ, on what day and at what hour the same was filed.

Michaelmas Term. 31 Geo. III. 1790.

Ejectment.
Motions for
judgment to
be entered in
a book by
Clerk of the
Rules,
and
the party not
to proceed
thereon un-
less he take
away the rule
for judgment
within two
days after
term.

IT is Ordered, That the Clerk of the Rules of this court shall for the future keep a book, in which shall be entered all the rules which from time to time shall be delivered out in ejectments, (instead of the present book), containing a list of the ejectments moved; in which book shall be mentioned the number of the entry, the county in which the premises lie, the names of the nominal plaintiff, the first lessor of the plaintiff (with the words "and others" if there be more than one), and also the name of the casual ejector:
And it is further Ordered, That unless the rule for judgment shall be drawn up and taken away from the Clerk of the Rules Office within two days after the end of the term in which the eject-

ment shall be moved, no rule shall be drawn up or entered in the book, nor shall any proceedings be had in such ejectment.

Michaelmas Term. 31 Geo. III. 1790.

IT is Ordered, That in case any defendant shall pay money into court under the usual rule, and the plaintiff shall be willing to accept thereof with costs; the said plaintiff's attorney do, upon an office copy of such rule, procure an appointment from the Master to tax such costs, and serve the same on the defendant's attorney; and that in default thereof, it be considered that the plaintiff intends to proceed in the action, to recover a larger sum than that paid into court.

Money into court.
Plaintiff accepting it, to take out appointment for taxing costs upon copy of the rule.

Easter Term. 31 Geo. III. 1791.

IT is Ordered, That from and after the last day of Trinity term next, where any affidavit is taken by any commissioner of this court, made by any person who from his or her signature appears to be illiterate; the commissioner taking such affidavit

Affidavits of illiterate persons how to be taken by commissioners.

RULES AND ORDERS OF

shall certify, or state in the jurat, that the affidavit was read in his presence to the party making the same; and that such party seemed perfectly to understand the same; and also that the said party wrote his or her signature in the presence of the commissioner taking the said affidavit.

Trinity Term. 31 Geo. III. 1791.

Sheriff
though out
of office may
be called up-
on by rule to
bring in the
body.

It is Ordered, That from and after the last day of this term, where any sheriff before his going out of office shall arrest any defendant, and a cepi corpus shall afterwards be returned, he shall and may within the time allowed by law, be called upon to bring in the body, by a rule for that purpose; notwithstanding he may be out of office before such rule shall be granted.

Trinity Term. 31 Geo. III. 1791.

Attornies.
No attorney
being clerk
to another
shall have an
articled clerk.

It is Ordered, That from and after the last day of Michaelmas term next ensuing, no attorney who shall be retained or employed as a writer or clerk by any other attorney, shall during the time of

such employ take or have any clerk under articles; and that no service to any such attorney under articles, during the time that such attorney shall be so employed by any other attorney, shall be deemed good service:

And it is further Ordered, That from and after the same last day of Michaelmas term, no person who shall enter into articles with an attorney or attornies, shall be at liberty to serve the agent or agents of such attorney or attornies, under such articles, for a longer time than one year of his clerkship; and that any such service to an agent or agents beyond that time shall not be deemed good service.

No articulated clerk to serve an agent above one year.

And to the intent that better information may be obtained touching the fitness and qualifications of persons applying to be admitted attornies; It is further Ordered, That from and after the same last day of Michaelmas term, every person who shall intend to apply for admission as an attorney in this court, and who shall not have been admitted an attorney or solicitor of any other court, shall for the space of one full term, previous to the term in which such person shall apply

Names and places of abode of every articulated clerk and of his master to be fixed up in the King's Bench Office, &c. before such clerk can be admitted an attorney.

to be admitted, cause his name and place of abode, and also the name or names and place or places of abode of the attorney or attornies to whom he shall have been articulated, written in legible characters, to be affixed on the outside of the Court of King's Bench; in such place as public notices are usually affixed; and also in some conspicuous place in the chambers of each of the Judges of this court, and in the King's Bench Office: and that no person who shall not have regularly complied with this order shall in future be admitted an attorney of this court.

Michaelmas Term. 32 Geo. III. 1791.

Sberiff to return writs on the day when the rule for returning them expires. IT is Ordered, That in future all writs shall be returned by the sheriff, on the day on which the rule for returning the same shall expire; and in default thereof the plaintiff shall be at liberty to move for an attachment on the next day.

Hilary Term. 32 Geo. III. 1792.

Master to be attended on the first appointment. IT is Ordered, That from and after the first day of next Easter term, on every appointment to be

made by the Master, the party on whom the same shall be served, shall attend such appointment ; without waiting for a second ; or in default thereof the Master shall proceed *ex parte* on the first appointment.

Hilary Term. 32 Geo. III. 1792.

“ WHEREAS, by an order made in Hilary term, *Circuits.*
 “ in the fourteenth year of the reign of his late Ma- *Writs and re-*
 “ jesty King George the Second, by all the Judges *records of nisi*
 “ of England, for preventing inconveniences to *prius for Nor-*
 “ suitors,” it was Ordered, amongst other things, *folk and Nor-*
wich when to
be entered.
 That no writ and record of nisi prius should be received at any assizes in any county in England, unless they should be delivered to, and entered with, the marshal, before the first sitting of the court after the commission day, except in the counties of York and Norfolk ; and there the writs and records should be delivered to, and entered with, the marshal, before the first sitting of the court on the second day after the commission day :

“ And whereas many inconveniences do happen
 “ to the suitors, and to the sheriff and jurymen,
 “ and to the public business of the assizes in the

“ county of Norfolk, from the delay in entering
 “ the writs and records for trial of the causes;
 “ now to prevent such inconveniences for the fu-
 “ ture;”

It is Ordered, by all the Judges of Eng-
 land, That no writ or record of nisi prius shall be
 received at the assizes in and for the county of
 Norfolk, or city of Norwich, unless such writ and
 record shall be delivered to, and entered with, the
 marshal, before the first sitting of the court on the
 day next after the commission day.

<i>Kenyon.</i>	<i>R. Perryn.</i>
<i>Loughborough.</i>	<i>F. Buller.</i>
<i>J. Eyre.</i>	<i>J. Heath.</i>
<i>H. Gould.</i>	<i>J. Wilson.</i>
<i>W. H. Asburst.</i>	<i>N. Grose.</i>
<i>B. Hotbam.</i>	<i>A. Thomson.</i>

Easter Term. 33 Geo. III. 1793.

Remanets.
 Writs of dis-
 stringas and
 records to be
 resealed.

IT is Ordered, That the writs of distringas, and
 the records in causes, which stand over from one
 sitting to another, be regularly resealed, previous
 to the sitting to which they stand over; or in de-
 fault thereof the causes be not tried.

Easter Term. 33 Geo. III. 1793.

WHEREAS inconveniences have arisen from the mode heretofore practised of granting rules to compound, whereby the defendant hath often evaded or delayed to pay the composition money ;

Compounding actions by undertaking to pay the composition money.

It is therefore Ordered, That in future every rule to be drawn up for compounding any qui tam action do express therein, that the defendant doth thereby undertake to pay the sum, for which the court has given him leave to compound such action.

Trinity Term. 33 Geo. III. 1793.

WHEREAS, by the present practice of this court, the bail put in for the defendant in any action cannot render such defendant, after a rule has been granted against the sheriff to bring in the body, before such bail have justified themselves in open court ;

Bail may render principal pending rule to bring in the body without justifying.

It is Ordered, That from and after the last day of this term, bail shall and may be at liberty to render the defendant, notwithstanding such rule,

at any time before the expiration thereof; the attorney for the defendant giving notice of such render to the plaintiff's attorney without delay, and making affidavit thereof.

Trinity Term. 33 Geo. III. 1793.

Attornies.
Names, and
places of a-
bode of every
articled clerk
and of his
master to be
entered in a
book at Jud-
ges' chambers
before
such clerk
can be ad-
mitted an at-
torney.

WHEREAS, by a rule made by this court in Trinity term, in the thirty-first year of his present Majesty, it was Ordered, (amongst other things) That every person who should after the then next Michaelmas term intend to apply for admission as an attorney in this court, should for the space of one full term previous to the term in which such person should apply to be admitted, cause his name and place of abode, and also the name or names and place or places of abode of the attorney or attornies to whom he should have been articled, written in legible characters, to be affixed on the outside of the Court of King's Bench, and also in some conspicuous place in the chambers of each of the Judges of this court, and in the King's Bench Office; and that no person who should not have complied with this order should in future be admitted an attorney of this court;

And whereas inconveniences have arisen by the above practice ; To remedy the same ;

It is hereby Ordered, That every person who shall, after the expiration of this term, intend to apply as above stated, shall comply with the above in part recited rule ; except as to fixing up his name and place of abode in the Judges' chambers ; and shall instead thereof for the space of one full term, previous to the term in which such person shall apply to be admitted, enter or cause to be entered in a book to be kept for that purpose at each of the Judges' chambers of this court, his name and place of abode, and also the name and place of abode of the attorney or attornies to whom he shall have been articulated ; and that no person who shall not have complied with this rule shall in future be admitted an attorney.

Michaelmas Term. 34 Geo. III. 1793.

It is Ordered, That from and after the last day of this present Michaelmas term 1793, the Seal Office be open in the forenoon, from eleven till one o'clock ; instead of from ten to twelve o'clock.

Seal Office.
At what
hours open.

Hilary Term. 34 Geo. III. 1794.

Sittings.
Time for en-
tering causes
in London
and Middle-
sex.

It is Ordered, That in future all causes to be tried at the sittings after term, shall be entered, and the records delivered to the marshal, at the times following; viz. the causes in Middlesex, the first day of the sitting after term in Middlesex; and the causes for London, two days before the adjournment day in London.

Hilary Term. 35 Geo. III. 1795.

Issue money.
Judgment
not to be
signed for
non-pay-
ment thereof

It is Ordered, That after the first day of the next term, no judgment shall be signed for non-payment of issue money: but that the issue money shall remain to be taxed as part of the costs in the cause.

Easter Term. 35 Geo. III. 1795.

*King's
Bench prison.*
*Limits of
the Rules.*

UPON reading a petition signed by several of the prisoners confined for debt in the King's Bench prison; and upon hearing the report of the

coroner and attorney of this court respecting the said prison and the rules thereof;

It is Ordered, That from and after the first day of Trinity term next, so much of the rule made on Friday next after fifteen days of Easter, in the thirtieth year of his present Majesty's reign as establishes the rules of the said prison, be, and the same is hereby repealed :

And it is further Ordered, That from and after the said first day of Trinity term next, the rules of the King's Bench prison shall be comprised within the bounds following; exclusive of the public houses hereinafter mentioned; that is to say, from Great Cumber Court in the parish of Saint George the Martyr in the county of Surry, along the north side of Great Suffolk Street, as far as the Star brewhouse; and from thence along the north-west side of Gilbert's Lane to the Blackfriars Road, and across the said Road along the north-west side of Webber Street, to the Halfway House; and from thence along the western side of Barron's Buildings and Saint George's Row, to the Westminster Road; and then across the said road, and along the western side of Saint

George's Mall, and from the pastry cook's at the west end thereof, directly across to the lamp-post on the footpath near the watch-house facing the Dog and Duck, and along the said footpath from the said lamp-post, to another lamp-post on the eastern side of the said Road facing Keys's Nursery; and then along the whole of the said Road leading by Prospect Place to the Elephant and Castle; and from thence along the eastern side of Newington Causeway to Great Cumber Court aforesaid :

And it is also Ordered, That the House of Correction for the county of Surry, the New Gaol Southwark, and the Gaol now building for the county of Surry, and the highways (exclusive of the houses on each side thereof) leading from the King's Bench prison to the said gaols respectively, shall be within and part of the said rules :

And it is lastly Ordered, That all taverns, victualling houses, alehouses, wine vaults, houses or places licenced to sell gin or other spirituous liquors, and all places licenced for public entertainments, shall be excluded out of and deemed no part of the said rules.

Trinity Term. 35 Geo. III. 1795.

WHEREAS the present Trinity term will not end until Thursday the twenty-fifth of June instant ;

Trinity term writs, made returnable the day after 24th of June, and sittings postponed accordingly.

It is Ordered, That the sittings for trial of causes at nisi prius do commence in Middlesex on Friday the twenty-sixth instant, and in London on Saturday the twenty-seventh instant; instead of the days already appointed : and that writs issued out of this court may be made returnable on Thursday next, after three weeks of the Holy Trinity.

Trinity Term. 35 Geo. III. 1795.

WHEREAS, it has heretofore been thought necessary, that, when a summons is obtained from a Judge of this court, either party should attend one whole hour from the time of the return of such summons, though the opposite party does not attend to proceed thereon ; which practice has been found inconvenient ;

Judge's Summons. Half an hour's attendance upon it sufficient.

It is hereby Ordered, That from and after the last day of this term, an attendance on any Judge's summons for half an hour next immediately following the return thereof, shall be deemed a sufficient attendance, and as effectual as an hour's attendance on any such summons has heretofore been.

Trinity Term. 35 Geo. III. 1795.

*Serjeants'
Inn Hall.*
The business
of the Court
of King's
Bench car-
ried back
from thence
to West-
minster Hall

It is Ordered, That the sittings of the Court of King's Bench in Serjeants' Inn Hall in Chancery Lane, from and after the last day of this term be discontinued :

And it is further Ordered, That all the business heretofore transacted at Serjeants' Inn Hall, be done in the Court of King's Bench at Westminster Hall; where one of the Judges of the court will sit during term time, every morning at half past nine of the clock, for the purpose of taking the justification of bail, and discharging insolvent debtors, &c. and that no bail be permitted to justify after ten of the clock.

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JURISDICTION
AND
PRACTICE
OF THE
COURT OF GREAT SESSIONS
OF
WALES.

JURISDICTION
AND
PRACTICE
OF THE
COURT OF GREAT SESSIONS
OF
WALES,
UPON THE CHESTER CIRCUIT.

WITH
PREFACE AND INDEX.

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FOR J. BUTTERWORTH.
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PREFACE.

§ 1. *SOURCES of Information, concerning the General Jurisdiction of the Court of Great Sessions of Wales, and the particular Practice of each Circuit, and more especially that of the Chester Circuit.*

§ 2. *Purposes of this Compilation ; as tending to ensure the preservation and improvement of the present Practice of the Chester Circuit ; and as tending also to elucidate the Question, Whether it be better to preserve, or abolish, the General Jurisdiction of the Court of Great Sessions.*

§ 1. *Whilst it is deemed expedient to preserve the present System of administering Justice in the Court of Great Sessions of Wales, in proportion to the importance of that object, it must necessarily be important to acquire, and preserve, a knowledge of those materials which constitute the Jurisdiction and Practice of the Court ; and from such an investigation and arrangement, it will also appear in what points this System differs from that which is established throughout the rest of the kingdom ; and what is the true nature of its merit or demerit.*

The Sources, from whence a knowledge of the General Jurisdiction of the Court of Great Sessions is to be derived, are, certain Records, Treatises, and Statutes.

Of Records, there are many which exhibit very early vestiges of the introduction of English Justice into Wales, and of its gradual

advancement, according to the gradual reduction of that country. In the Chapter-house at Westminster, (a) there is a Roll containing Extracts from the Patent and Close Rolls of matters relating to Wales, from 1 Hen. III. 1216, to 37 Hen. III. 1252; and another Roll containing the *Statuta Walliæ* made in 12 Edw. I. 1284. The *Welsb* Rolls, remaining in the Tower of London, begin with the treaty between Edw. I. and Llewellyn, Prince of North Wales, in 4 Edw. I. 1277; they proceed through the period in which the *Statuta Walliæ* were made; and continue in a regular series down to 23 Edw. I. 1296; shewing the various measures employed for subduing the country, (b) and for introdu-

(a) See 1. Vol. Reports Ho. Commons, p. 528. In the very curious and valuable Report upon the burning of the Cotton Library, these Records are mentioned as being then deposited at the Receipt of the Exchequer; but they were soon afterwards removed, with all the rest of the Records in that place, to the Chapter-house at Westminster.

(b) Anno, 10 Edw. I. "*Lucas de Tany ad muniendum Insulam de Angleseia mittitur, et ad pontem ibidem faciendum.*" See *Ayloff's Calendar of Ancient Charters*, p. 81.

cing the administration of English Justice by English Judges. In Rymer's Fœdera, are preserved many of the public instruments regarding the Judicature of Wales, (a) from the time of King John's treaty with Llewellyn, in 1201, down to 5 Car. I. 1629. As to the Judicial Records of the Courts of Great Sessions, few of them have, till very recently, been lodged in any public or safe repository; and even now, there are no regular Record Offices in several of the Welsh counties.

The Treatises, to which we may resort, are principally; Sir John Dodridge's History of the Ancient and Modern Estate of the Principality of Wales, Duchy of Cornwall, and Earldom of Chester; published in 1630: the Description of the Jurisdiction of Justices itinerant in the Principality of Wales; printed with Lord Bacon's Law Tracts, 4to edition,

(a) In Rymer's Fœdera, vol. V. p. 166, is a grant of the office of King's Attorney for the counties of Carmarthen and Cardigan, anno 1629, nearly in the form of the modern Patents.

vol. II. p. 512, but attributed also by Archbishop Sancroft to Sir John Dodridge: and Lord Coke's Chapter on the Courts of Wales, inserted in his fourth Institute; published in 1644.

Sir John Dodridge, although he treats chiefly of the Revenue of the Principality, &c. speaks also incidentally of the Courts of Justice within the Principality; and he delineates, briefly but perspicuously, the establishment of the King's Great Sessions in Wales to be holden twice every year in each county, and the Jurisdiction of the four Circuits as settled by Henry the Eighth when Wales became united to England; describing their respective seals writs and course of procedure, and enumerating the several offices of the King's Attorney Prothonotary Clerk of the Crown Marshal and Cryer, attendant upon each Circuit, with a detail of their duties and appointments.

The Jurisdiction of Justices itinerant, of

which it is doubtful whether Sir John Dodridge or Lord Bacon be the author, contains only a very short description of the power vested in the Court of Great Sessions and its Officers; and appears to be only an outline, or short abstract, of what afterwards was inserted in Sir John Dodridge's larger tract.

Lord Coke in his 4th Inst. c. 47, only refers to the several Statutes for uniting Wales to the realm of England, and states some ancient Welsh customs which even in his time were become obsolete: and although Prynne, in his Animadversions, adds an infinity of references to Records upon this subject; yet he neither pretends to correct the text of Lord Coke in this instance, nor to suggest any further observations as arising out of his additional materials upon the subject.

Many Statutes, subsequent to those which united Wales to England, have also successively contributed to new model and regulate the Welsh Judicature in all its branches.

The provisions made by Statute regard, either the Judges and Officers of the Court, or the Proceedings between the parties.

As to the Judges and officers of the Court : Instead of one Judge for each circuit, the Crown is enabled to appoint two or more ; (a)

(a) Chief Justice, as a title belonging to the Justices of Great Sessions, cannot be assumed properly by any one except the Chief Justice of Chester.—It is true, that Sir John Dodridge, in expounding the Jurisdiction of the four Circuits, says, that each has two Justices, viz. one Chief Justice, and a Second Justice assistant ; but this seems to be inaccurately stated ; for the office being expressly created by Statute, it cannot have any other proper denomination than what it receives by Statute. The Stat. 34, 35 H. VIII. c. 26. which introduces the present Judicature, speaks only of the Justice of each circuit : the same Stat. indeed, in § 126, mentions the High Justice for the County of Pembroke ; and so Stat. 2, 3 Ed. VI. c. 28. and Stat. 43 Eliz. c. 15. speak of the High Justice of Chester. But the Stat. 18 Eliz. c. 8. which enables the Crown to appoint two Justices of each circuit, gives no name of pre-eminence to either of the two. It is Stat. 12 Geo. III. c. 30. for augmenting their salaries, which alone uses the title in question, and that Statute speaks of “ the Chief Justice of Chester ; the Second Justice of Chester, and each of the Justices of the Great Sessions for the counties in Wales.”

and to grant Commissions of Association ; by Stat. 18 Eliz. c. 8 : further accommodations are to be provided for them by the Sberiff of each county, according to Stat. 8 Geo. III. c. 14 : their salaries are augmented, by Stat. 12 Geo. III. c. 30 : and their power of appointing a deputy is restrained to specified cases of inferior moment, with a proviso nevertheless for the appointment of other Judges ad interim, in case of illness ; and a general power is given to them of appointing Commissioners to take Affidavits and Recognizances of Bail, within the limits of their several jurisdictions ; by Stat. 13 Geo. III. c. 51. § 1, 3, 5, 9, 12. The Sberiffs of Wales are to be appointed by the Crown, out of three persons nominated for each county by the Judges of Great Session upon each circuit ; according to Stat. 1 W. & M. c. 27. § 3 ; with a special saving of the chief part of their ancient Sbrieval oath, and a direction that they shall still continue to account before the Auditors of the Principality ; by Stat. 3 Geo. I. c. 15. § 20, 22. Juries also are regu-

lated in many respects by a variety of Acts : the powers of naming and impannelling jurors de circumstantibus, and of fining jurors so named if they make default, are given by Stat. 5 Eliz. c. 25 : the qualifications for common jurors, and for persons serving on the tales, are settled by Stat. 4, 5 W. & M. c. 24. § 15, 19 : and the mode of summoning, returning, and impannelling common jurors, by Stat. 3 Geo. II. c. 25 : the use of special juries is introduced by Stat. 13 Geo. III. c. 5. § 6, 7, 8. The mode of obtaining and conducting a view is regulated by Stat. 3 Geo. II. c. 25. § 14.

As to the mode of Proceeding between party and party : Original writs, and bills, and all mesne process, are made returnable in vacation by Stat. 13 Geo. III. c. 51. § 15 : Arrests from the superior courts are prohibited, unless upon oath of the debt amounting to twenty pounds and upwards ; by Stat. 11, 12 W. III. c. 9. § 2 ; which is not repealed by Stat. 12 Geo. I. c. 29 ; vide 2. Strange

1102. *Process of Outlawry from the courts of Westminster, is made effectual in Wales, by Stat. 1 Edw. VI. c. 10: And the Stat. 4 Geo. II. c. 26. directing all law proceedings to be in English, is extended to the Courts of Wales, by Stat. 6 Geo. II. c. 14. Many minute provisions have been also enacted, for the furtherance of justice in the conduct of suits; such as allowing a plaintiff to enter an appearance for a defendant, in personal actions under ten pounds, if the defendant after process served upon him neglects to appear in due time; by Stat. 6 Geo. II. c. 14: and directing the course of justifying bail, and of proceeding to declare and plead inailable actions, by Stat. 13 Geo. III. c. 51. § 13, and 14: All judgments are directed to be docketted, and their effect against purchasers is declared, by Stat. 8 Geo. I. c. 25. § 6: The Law of Costs, as settled by Stat. 22, 23 Car. II. c. 9. § 136, is extended to Wales and the Counties Palatine; by Stat. 11, 12 W. III. c. 9: The execution of judgment, where the person or effects*

of a defendant cannot be found within the jurisdiction, is enforced by process from the Courts of Westminster; by Stat. 33 Geo. III. c. 68. § 1. which Statute also takes away the arrest in execution of a judgment in the County Court, and gives to the writ of false judgment a power of staying the execution itself. Writs of error to the King's Bench in pleas personal are permitted by Stat. 1 W. & M. c. 27. § 4; in like manner as they were allowed in pleas real and mixed, by Stat. 34. and 35 Hen. VIII. Fines and recoveries in Wales are regulated by Stat. 17 Eliz. c. 9. And infant trustees and mortgagees are enabled to convey, by Stat. 4 Geo. II. c. 16.

These are some of the most remarkable Statutes which regulate the Judicature of the Courts of Great Sessions. Some other important Statutes have also been passed since the union of England and Wales, for purposes of a more local nature : amongst these are, the Statute 1 W. & M. Sess. 1. c. 27. § 2. for abolishing the jurisdiction of the Marches ; the

Statute 8 Eliz. c. 20. to prevent trying in Carnarvonsbire or Anglesea any offences committed in Merionethsbire : and several Statutes respecting the County Palatine of Cbester, &c. viz. for levying fines ; 2 and 3 Edw. VI. c. 28 ; for allowing returns of mesne process in vacation ; and for directing the practice of Special Bail, and proceeding in bailable actions ; 22 Geo. II. c. 46. § 35.

Such are the Sources to which we must resort for a knowledge of the General Judicature of Wales, and such are the principal matters which these sources afford.

The Particular Practice of each of the four Circuits into which Wales was divided by Henry the Eighth, must be looked for in the particular Code of Rules and Orders which the discretion of each Court has laid down for its own separate convenience. All the Circuits have a great similitude in their Practice, though with some accidental variations ; and each Circuit has its peculiar standard of Practice,

which alone it acknowledges as having authority within its own limits.

For the Circuits of North Wales, comprehending the counties of Anglesea Carnarvon Merioneth Montgomery Denbigh and Flint, one work of this sort has been formerly published ; namely, Vaughan's Practica Walliæ, 12mo, London, 1672. The design of it was useful, but the execution very indifferent. The first part of it, which professes to explain the method of proceeding in the Great Sessions from Original to Execution, is considered as containing the earliest account of the mode of conducting suits in Wales ; especially in the three northern counties, which were erected into counties by Stat. Wall. 12 Edw. I. though these are sometimes erroneously called " shire " ground time beyond memory : " but this first part is written in a perplexed style ; and much of it is obsolete : The General Rules which follow are very few and obscurely expressed : and the book concludes with an abstract of each Statute regarding Wales, from 12 Edw. I. to

27 Eliz. c. 9. *Upon the whole, this work is of very little use in modern practice.*

For the Carmarthen Circuit, comprehending the counties of Carmarthen Pembroke and Cardigan, the only work published is "Foley's Practice of the Court of Great Sessions for the several Counties of Carmarthen, &c. 8vo, London, 1792." This is a clear and compendious treatise, as far as it enters into the subject : it is a very useful introduction to the detail of Practice in many points common to all the Welsh Circuits ; and contains some curious forms of waging law and proceedings in dower with a short appendix of Rules, beginning 1 Geo. II. ; but this book does not profess to set forth the Practice of the Court in Equity.

For the Brecknock Circuit, comprehending the counties of Brecknock Radnor and Glamorgan, no book upon its Practice has been published ; but there probably exists in private hands a MS. work compiled several

*years ago, intituled "Proceedings at Law in
" the Great Sessions of the counties of Gla-
" morgan, Brecon, and Radnor; with the
" Rules and Orders of the Court of Chan-
" cery of the Great Sessions for the said
" counties."*

*For the Chester Circuit, no work has ever
been published; except so much of the Practica
Walliæ as applies to the counties of Montgo-
mery Denbigh and Flint; and except also a
collection of "Rules of the Court of Sessions
" of the County Palatine of Chester, 8vo, Ches-
" ter, 1783:" and neither of these contains
a regular or entire collection even of the Ge-
neral Rules and Orders for the jurisdiction to
which they belong.*

*In explaining what is here proposed to be
done towards supplying this deficiency; it should
be stated; that upon this Circuit, the Judges
of Great Sessions hold their office by virtue of
two distinct patents, one for Denbighshire and
Montgomeryshire, and another for Flintshire*

and Cheshire ; but that their Chancery jurisdiction runs through all the three former counties ; and the equitable jurisdiction for the county of Chester is vested in the Chamberlain of Chester, who exercises it by his Vice-Chamberlain. It should be stated also, that the course of proceeding upon this Circuit has been gradually framed and settled, in some degree, by certain General Rules and Orders which the Judges have pronounced from time to time ; and in other respects, according to the particular Rules made in particular cases, which have been afterwards recurred to as precedents. These several Rules and Orders have been casually noted as they arose by each Prothonotary in his time, and entered into some book for his own private and personal instruction ; And it is, by comparing these several manuscript collections, no one of which is complete, and most of which differ from each other in the variety of their contents ; and by arranging their materials according to the regular course of procedure ; and by incorporating with them, under their

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proper heads, every article of the printed Chester Rules ; that the present Compilation has been formed. The distribution of the whole is into four parts. I. the Style and Forms of the Court. II. Pleas of the Crown. III. Proceedings in Civil Actions ; containing the Rule on each Point, whether general or special ; with its date when, and the place where, it was made. IV. Proceedings in Equity ; which part appears to have been originally a sort of reading or private commentary upon the subject ; but it now contains also several Rules made in particular cases, and is resorted to as conclusive authority upon this branch of business. A general Index follows, comprizing all the contents of the Text.

Such are the Sources which furnish a knowledge of the Practice of each particular Circuit in Wales, and especially of the Chester Circuit.

§ 2. *As to the proposed objects of this Compilation ; they are, first, to ensure the preservation, and to promote the improvement, of the present practice of the Chester Circuit ; so long as the present Jurisdiction remains in force : And besides that, to afford the more ready means of elucidating the Question which may arise out of the whole subject ; namely ; Whether it be more expedient, upon grounds of public policy and justice, that the present Jurisdiction of the Court of Great Sessions should be preserved, or wholly abolished.*

To have collected arranged and published the Practical Rules of this Jurisdiction is so far to have contributed to their preservation ; and from a more ready view of them as they are, it may more easily appear what improvements they still require, in order to clear up the contradictions, or remove the impediments, which still embarrass and obstruct the course of justice : for contradictions have obtained in many instances, for want of knowing what had been previously ruled on the

same points : and improvements will suggest themselves in other instances ; such as, introducing into the Welsh Counties the same practice of Vacation Pleadings as obtains in Cheshire, if the practice be right ; or putting an end to it in Cheshire, if the practice be wrong. The present Compilation may also tend to assimilate the different modes of practice on the different Circuits within the Principality.

As to the Question touching the general utility of the Welsh Jurisdiction, and whether its preservation or abolition be most desirable, that is certainly a more remote consideration : but it has been heretofore agitated in Parliament ; and in balancing its merits and demerits upon any future occasion, the authentic materials for argument contained in this Compilation may not be unserviceable.

Some points in the discussion may be taken for clear ; others will remain to be solved.

It may be assumed, on grounds of public policy, that to keep up a distinction of judicature between people inhabiting different parts of the realm conduces of itself to no positive advantage: It may be assumed also that the original motives with which we are historically acquainted, and which made the ancient separation prudent and even necessary, no longer exist in these days: It may be assumed further, that no new political event has occurred to render the continuance of it beneficial.

On legal grounds, it is clear; that the superior Courts of Justice in England have a concurrent Jurisdiction with the Court of Great Sessions, in most criminal (a) and civil

(a) See *Atboe's case*, *Stra.* 553, but better reported in 8 *Mod.* 135; shewing the authority of English Judges to try for a murder committed in Wales: this case, however, establishes only, that misdemeanors and felonies, &c. committed in Wales may be indicted before an English Grand Jury, and tried in the next English county, but it does not extend to the Higher sorts of Treason; the whole jurisdiction of English Justices of the Peace and Gaol Delivery, over Welsh

matters, as well at common law (a) as in equity; (b) although they have no paramount authority by which they can supersede, or suspend, the proceedings of the Court of Great Sessions; except by prerogative Writ, (c) or Writ of Error, or Appeal; and it is therefore clear

crimes, depending on Stat. 26 H. VIII. c. 6. confirmed by Stat. 34, 35 H. VIII. c. 26. § 85, 86, which does not name these Treasons: and therefore High Treason in Wales must always be prosecuted in the first instance before a Grand Jury of Wales.

(a) *See Dougl. Rep. 202, 203. n. upon the Latitat into Wales; and ibid. 250. upon changing the venue into Wales.*

(b) *See Dougl. 6. and 1 Atk. 408.*

(c) *That a certiorari will lie in cases of misdemeanor or felony, see Cro. Jac. 484. 2 Burr. 855. Dougl. 723. 3 T. Rep. 658; and probably also for every indictment found by a Welsh Grand Jury for High Treasons, committed in Wales, though the case does not appear to have occurred: the reasoning in the Berwick case, 2 Burr. 855, seems to rest on the general right of the Crown to issue a certiorari to every Criminal Court within the King's dominions, without distinction as to the degree of the crime charged in the record; and it should seem by the analogy of precedents, that an indictment for High Treason found in Wales might be afterwards removed by certiorari into the Court of King's Bench, and there tried at bar, or sent down for trial before the Judge named in the commission of Nisi Prius for the next English county.*

that a party plaintiff, whose cause of suit arises within Wales, has the power in numberless instances (a) to drag his adversary into litigation before a distant tribunal in England; a power which in the hands of superior wealth, may become an engine of great oppression; and that the defendant cannot in any case compel a plaintiff, who drags him unnecessarily out of his own county, to bring back the suit into Wales: So that if the supposed virtue of the Welsh Judicature be, the benefit of having justice administered to each man at home; even at present, one of the two contending parties in every action may deprive the other of that very benefit.

It is also clear; that a plaintiff suing within the Jurisdiction, may upon some of the Circuits, obtain judgment in an action

(a) Notwithstanding Stat. 13 Geo. III. c. 15. § 1, 2, by which a plaintiff who brings a personal action in any of the superior Courts at Westminster, against a defendant resident in Wales, if he does not recover a debt or damages to the amount of £10. is subjected to the payment of Costs; unless the freehold or title of land be chiefly in question.

of debt for a sum certain, upon what is called the Old Rule, without any personal notice whatever to the defendant: and upon that judgment, after one month's delay, if the plaintiff will verify his own demand by his own affidavit, he may take out execution against the goods or body of his adversary: and the effect of this execution, if levied, the defendant cannot avoid; except by giving security to the Sheriff for the amount of the effects levied in satisfaction of the debt and costs; which indeed if he can do, he may be let in to controvert the debt at the following Great Sessions: The reason usually alleged in support of this proceeding, is, the necessity of securing small debts by suddenly impounding the effects of a poor and fugitive defendant; but if the debt be nearly commensurate with the defendant's property, which is the very supposition by which this proceeding is supported, then it must often follow that the demand of any unjust debt, provided it be large enough of itself, or be made so by the addition of costs, will deprive the defendant of all justice and drive him to utter ruin.

Beyond this, it is clear ; that a plaintiff suing within the Jurisdiction, may, by commencing his action at the close of a summer's Great Sessions, keep it hanging over his adversary for nearly seven months ; without any possibility for the defendant to get rid of it by judgment of non pros, or bringing it to trial ; which any defendant in the superior Courts may do generally in less than as many weeks : this also is another inconvenience of the present mode of administering justice to every man at his own home,

And lastly, it is clear ; that the course of Equity proceedings is even more dilatory and prolix in the Court of Great Sessions than in the High Court of Chancery : for although it be true, that during the three weeks which the Welsh Circuit occupies twice in each year, the progression of an equity suit there is infinitely more rapid ; yet it is equally true, that such a suit must generally sleep ten or eleven months of the year, during the long intervals between Circuit and Circuit ; whereas the proceedings of the superior Court,

however tardy, may be carried on uninterruptedly during almost the whole course of the year,

If it be urged, that all or any of these disadvantages are compensated by the cheapness with which justice is so administered ; the fact itself may be well doubted, as a general proposition ; and the reverse of it may in many cases be demonstrated : and if the fact be admitted, there still may remain a doubt whether the purchase of injustice (in so many instances) even at a cheap rate, be an advantageous privilege. An obvious remedy however occurs ; if the poverty of Wales be thought greater than that of Northumberland or Cornwall ; namely, by raising the Jurisdiction of the county Courts in suits for debt to a higher amount ; and leaving all other questions of contract and tort to the superior Courts : for as to the equity proceedings, the Court at present wants some of the most efficient officers to make it of any material service to the country ; and it will hardly be thought expedient

to add to the expensiveness of such a jurisdiction.

The points which on the other hand remain to be solved, in order to see whether the evils incident to the present Judicature of Wales may not and ought not to be remedied, are amongst others the following :

Supposing by the efflux of three centuries, and by the continual vigilance of Parliament during that course of time, the people to have become gradually familiarized with the forms of English Jurisprudence, and their country also to be now rendered accessible every where to the ordinary modes of intercourse ; and supposing therefore the Courts of Great Sessions to exist no longer, and the Principality of Wales to receive the like measure of justice, and in the same course, as the Duchy of Cornwall or the County of York ;

Would not every party suing at common law, have the opportunity of trying his cause

before Justices of Assize, at least as often as be now can before the Justices of Great Sessions? and would not the defendant as well as the plaintiff, be also secure of a longer time to prepare for trial, and of having that trial in his own county? and might not both parties have the service of a fuller bar, and the benefit of a more varied succession of Judges?

Might not every action be more conveniently tried in the very county where the evidence arises? the course of the English Courts obviating all possible mischiefs from prejudice or partiality, by always allowing the place of trial to be changed, in local or even in mixed actions, if any sufficient cause for it can be suggested.

Might not every person engaged as a defendant in equity, be relieved from those extraordinary interruptions of justice, which belong only to the Court of Great Sessions? an evil which it may be absolutely impossible for

him to avoid, if his adversary be litigious, or if his own property be affected by equitable trusts, which at present embrace almost every description of property whatever.

Upon examination of the whole question in all its parts, if it should finally appear, that the arguments for abolishing the Welsh Jurisdiction ought to prevail ; it will then be satisfactory to find, that such a measure would also be warranted by general principles, and analogous precedents, each of the highest authority.

*In principle ; this alteration would fully satisfy the standard proposed by Lord Hale, in his Discourse upon Amendment of the Laws, by which he requires ; “ 1. That the
“ change be demonstrable to be for the better,
“ and such as cannot introduce any considerable inconvenience ; 2. That the change be
“ not in foundations or principles, but in such
“ things as may consist with the general frame
“ and basis of the government or law ;*

“ 3. That the change be gradual, and not too much at once, or at least not more than the exigence of things requires.”

Precedents for such measures are to be found in almost every page of our History and Statutes ; in proportion as Jurisdictions, useful in their origin, have gradually by change of times become pernicious or useless. The Justices in Eyre were superseded by the more effectual office of Justices of Assize. The Star Chamber, a court next in rank to Parliament itself, eminently useful in its origin, and regular in its proceedings, was for the gradual abuse of its power at last abolished by Stat. 16 Car. I. c. 10. The Court of the President and Council of the North was put an end to by the same Statute. The Court of Wards and Liveries was abolished by Stat. 12 Car. II. c. 24. The Court of the President and Council of Wales and the Marches, restrained by Stat. 16 Car. I. c. 10, was abolished by 1 W. & M. Sess. 1. c. 27 : and the Counties Palatine of Hexham and Pembroke were extinguished by

Stat. 27 Hen. VIII. c. 26, § 14. and 17 Eliz. c. 13.

The consequences of such a measure to the public interests of the kingdom, remain lastly to be considered. And although it might require an increase in the number of English Judges to discharge the increase of Circuit duty, instead of those Judges whom it would supersede ; yet this very consequence might be economically beneficial, as far as that consideration ought to weigh ; and it might also be rendered of the highest importance, and of the greatest advantage, to the general administration of justice. Nor can any valid objection arise from the mere change in the number of Judges ; as that has been extremely variable at different periods of time. Edward the Second increased the Judges of the Common Pleas, from three to six, and afterwards to seven : Edward the Third raised their number to nine : Richard the Second preferred five : and Henry the Sixth changed the number four times in the course of his

reign : Edward the Fourth diminished their number (a) to four : James the First added a fifth Judge to the Common Pleas, and a fifth to the King's Bench ; (b) that the Circuits might always be fully supplied with Judges of the superior Courts : the number afterwards decreased ; but Charles the Second, towards the end of his reign, added a fifth Judge to the Common Pleas, (c) to compensate for the absence of one of the four who still retained his office.

Economically, there would be an advantage to the public, if two additional English judges were appointed in lieu of the present establishment of eight inferior Judges for Wales : and even if three English Judges were thought more eligible, the increase of expence would be very inconsiderable.

But the most important advantage of such

(a) *Dugdale Origines Juridicales*, c. 18.

(b) *Lord Coke's Pref. 4. Rep.*

(c) *Sir T. Raym Rep. fo. 475*

a measure, if it should be deemed proper, would be derived from the additional services of this increased number of Judges, especially if Three were appointed: inasmuch as two of their number might suffice for the single Circuit within which all Wales might be conveniently comprehended; and the third might give to the business of the Northern Counties of England, upon each Spring Circuit, that additional aid which their growing importance requires, and of which they are now deprived by the necessary attendance of the Chief Justices and the Chief Baron upon Private Bills in the House of Lords: and all the three additional Judges might usefully assist upon the rota at the highest criminal court of Ordinary Jurisdiction, the Old Bailey; and might also render most eminent service to the public, by accelerating the progress of causes in the highest court of Equity, and sitting constantly there, under the same sort of commission as now authorizes certain of the Judges to sit there occasionally, in the absence of the Lord High Chancellor: for his time is and must be neces-

sarily and continually employed, in attending upon his Majesty's affairs in Council and Parliament; and in dispensing the royal favour for the public service, by selecting fit persons, to supply vacant benefices in the Church, and to fill all the seats of Justice in the superior courts, as well as in those numerous and important tribunals, where the Commission of the Peace is executed by Magistrates, whose appointment is wholly intrusted to his vigilance, and whose removal depends singly upon his pleasure.

Modern times having gradually involved the interests of almost every individual in the nation within the Equitable Jurisdiction of Chancery, the magnitude of its labours seems to require this additional aid for their dispatch: And the Custody of the Great Seal embracing so large a circle of other duties, this First Magistrate and Great Officer of the Crown might be expected gradually to withdraw his presence from the actual administration of ordinary justice; appearing there only

when called upon, to represent the King in his Visitatorial authority over eleemosynary corporations of royal foundation, or to controll Charitable institutions, or to exercise the King's prerogative in matters of Lunacy, or his summary jurisdiction as general Guardian of all Infants, or to pronounce upon the contested legality of Patents submitted to the sanction of the Great Seal, or to sit in judgment upon the great questions of Commerce which arise out of the Laws of Bankruptcy; and interposing his equitable authority only in the decision of Appeals and Rehearings; from whence this further advantage must follow, that after causes had undergone by this means such repeated and solemn consideration in the Court of Chancery, it would become less frequently necessary to encounter the expence delay and inconvenience of resorting to the Appellate Jurisdiction of the House of Lords.

The Lord High Treasurer, and the Chancellor of the Exchequer have, from obligations similar in their nature, long since with-

drawn themselves from the Equity Court of the Exchequer; (a) in which they nevertbe-

(a) *The Lord High Treasurer, and the Chancellor of the Exchequer, sometimes together, and sometimes singly, appear to have sat in judgment with the Lord Chief Baron and other Barons, upon private suits in equity, constantly in the reigns of James the First, and Charles the First: after the Restoration, it was less frequent, but not unusual; Anthony Lord Ashley, Chancellor and Under Treasurer, sat in judgment with the rest of the Court, 19 Car. II. Sir John Ernle, holding the same office, sat there, 29 Car. II. John Smith, Esq. as Chancellor and Under Treasurer, sat in judgment with the rest of the Court upon a rehearing in which the Barons had been equally divided in opinion, Packington v. Wych Trin. T. 8 Anne, 1710. Sir William Wyndham sat also as Chancellor upon a similar occasion. Bishop of Bath and Wells v. Dyke, Hil. 11 Anne, 1713. And Sir Robert Walpole sat as Chancellor upon the second argument of a Plea, Trollop v. Trollop, 21 June, 1732; and afterwards on a rehearing, Nasb v. E. India Co. 27 Oct. 1735. The Barons in Hil. T. 1775, ordered an application to Lord North, then Chancellor of the Exchequer, requesting him to assist in bearing the cause of Lee v. Lord Vernon; but the suit was afterwards, upon the resignation of Baron Perrot, carried to the House of Lords, instead of rehearing it. At this very time, the Chancellor of the Exchequer exercises not unfrequently the same judicial authority as his predecessors, in granting process by extents.*

less retain the pre-eminence of honour, and occasionally exercise their right to sit in judgment, whenever their presence upon the rehearing of any cause is wanting to turn the divided opinions of the Barons, and give to suitors the benefit of a solemn decision. Such an example therefore, resting upon such foundations, might well warrant an arrangement which in itself appears to be so desirable.

But be these matters hereafter as they may: To those who inhabit the Principality of Wales, and who have to seek for justice in the Courts of Great Sessions, it cannot be an unacceptable service, to lay before them at present a fuller view than has yet appeared of that Jurisdiction to which they are all continually amenable.

PRACTICE

OF THE

CHESTER CIRCUIT.

I. STYLE OF THE COURT, AND ITS FORMS, &c.

II. PLEAS OF THE CROWN.

III. PROCEEDINGS IN CIVIL ACTIONS.

IV. PROCEEDINGS IN EQUITY.

PRACTICE, &c.

I.

STYLE OF THE COURT, AND ITS FORMS, &c.

- § 1. *Style of the Court.*
 - § 2. *Holding of the Courts.*
 - § 3. *Rules and Orders of the Court.*
 - § 4. *Protbonotary's Office.*
 - § 5. *Record Office.*
 - § 6. *Sheriff's Books and Process.*
 - § 7. *Fines and Recoveries.*
-

§ 1.

Style of the Court.

“ BE it remembered, that at the Great Sessions <sup>In pleas of
the crown.</sup>
and Gaol-delivery of our Lord the King at Pool,
in and for the county of Montgomery, on Satur-
day the eighth day of August, in the 35th year

of the reign of our sovereign Lord George III. King of Great Britain, &c. and in the year of our Lord 1795, before the Honourable Edward Bearcroft Chief Justice, and the Honourable Francis Burton, the other justice for our said Lord the King, of the Great Sessions of the county of Montgomery aforesaid, assigned to deliver the gaol of the said county of the prisoners therein being, and also Justices of our said Lord the King, assigned to keep the peace of our said Lord the King, in the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed or done in the said county."

In Civil
Suits.

"PLEAS at Pool, in the county of Montgomery, before the Honourable Edward Bearcroft Chief Justice, and the Honourable Francis Burton, the other Justice of our Lord the King of his Great Session of the county aforesaid, holden at Pool, in the said county, on Saturday the 8th day of August, in the 35th year of the reign of our Sovereign Lord George the Third, by the Grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, and so forth—
1795."

§ 2.

Holding of the Courts.

ORDERED, That when the evening court is ^{Evening} holden together with the morning's court, it shall ^{Courts.} be supposed for all purposes of pleading, &c. to be holden at seven o'clock in the evening; and to continue open till nine o'clock; with liberty for any party to make special application within that time to the Judges at their lodgings, upon giving notice to the opposite party. *Pool, August, 1786. Mold, March 28th, 1788.*

§ 3.

Rules and Orders.

ORDERED, That Rules severally bearing date in ^{For what} • Montgomeryshire, Denbighshire, or Flintshire, be ^{counties,} nevertheless observed as Rules for all the three ^{and to what} counties; unless confined, expressly or by local ^{counties, they} reasons, to the counties in which they are made. ^{extend.}

Wrexham, April 6, 1789. Pool, March 29th, 1791. S. P.

Ordered, That all Rules made for the county of Chester be observed as Rules for the other three counties upon this circuit ; unless they are confined, expressly or by local reasons, to the county of Chester. *Davies, Esq. v. the bail of Williams, def. in sci. fa. Pool, Aug. 30th, 1791.*

Note, That where any thing to be done is governed by the day of the week, according to the following rules, it supposes the Great Sessions to begin on a Monday.

§ 4.

Prothonotary's Office.

ORDERED, That the Prothonotary's Office be ^{Prothono-} open by eight o'clock in the morning, and not ^{tary's Office.} after ten o'clock at night, during the Great Sessions. *Mold, March 28th, 1788.*

§ 5.

Record Office.

WHEREAS, upon representation of the Grand Jury for the county of Denbigh, it appears, ^{Records re-} tha he records of the said county are kept at ^{moved and} Wrexham in a very insecure state; it is therefore ^{secured.} Ordered, That the said records be removed forthwith to Ruthin, and lodged in the Record Office there erected. *Rutbin, March 30th, 1792.*

§-6.

Sheriff's Books, and Process.

Sheriffs
to deliver
county
books to
their suc-
cessors.

ORDERED, That the books belonging to the county court be always delivered to the succeeding sheriff. *Mold. 2 W. III.*

Fined for
not execu-
ting process.

Ordered, That Robert Lloyd of Mould nuper vic' com' be fined £.100, for not executing the King's process. *Flint, Mar. 2 Jac. II.*

To pay costs
before fine
or issues dis-
charged.

Ordered, That when issues are returned against the High Sheriff on a distringas, or he is fined for not returning any writ or process, the issues and fine be not discharged till the costs of the motion, distringas, and rule be first satisfied. *Flint and Chester, 1 April, 8 Ann.*

§ 7.

Fines and Recoveries.

THAT, in all writs of covenant and præcipes for levying of fines and suffering recoveries, one of the attornies of this court must be retained or concerned in the same; or else none to be received. *Mold, March. 2 W. M.*

Attornies to be concerned in them.

Ordered, That no recovery be arraigned without an attorney's name be to the writ of entry. *Mold, March. 3 W. M.*

Attorney's name to the writ.

Ordered, That no person for the future shall be a commissioner for taking the caption of a fine or warrant of attorney for suffering a common recovery, unless he be of the age of twenty-one years at least. *Chester, 8th April. 4 G. II.*

Commissioner for taking them to be 21 years of age.

Edward Baxter Comp. v. Thomas Evans & al. Proclaiming Fines.
 deforciant in covenant to levy a fine, acknowledged before Sir Job Charlton by virtue of a writ of covenant. *Sess. 4 Ja. II.* Ordered by the court, that the fine be received, and

proclamations made this session. *Mold, April.*
2 *W. M.*

Whereas, it hath been hitherto usual, in the levying of fines and suffering of common recoveries in this court, when the acknowledgment of such fines, and of the warrants of attorney taken from the tenants or vouchees in such recoveries, were taken and acknowledged before commissioners by virtue of any writ of dedimus potestatem to them directed, for one of such commissioners to appear personally before one of the Justices of this court, and be examined upon oath touching the due acknowledgment and caption thereof: which practice hath been generally attended with great expence to the parties; and other important inconveniences:—For remedy thereof,

Acknowledgment of fines and warrant of attorney from the tenants or vouchees in Recoveries to be certified by Affidavit.

It is Ordered by this court, That from and *after the last day of this present session*, instead of the oath made *viva voce* by a commissioner, of the due acknowledgment of such fines, or warrants of attorney respectively, *an affidavit or affidavits in writing, on parchment*, shall be made and annexed to the præcipe and concord of every such fine and warrant of attorney; *in which affidavit or affidavits the person or persons making the*

same shall set forth the true name, and place of abode, and addition of him or themselves, and also of every commissioner who acted in the taking such acknowledgment or acknowledgments: And in such affidavit or affidavits the person or persons making the same shall also swear, that he or they knew the party or parties acknowledging such fine or fines, or warrant or warrants of attorney; that the purport and effect thereof was fully explained to him, her, or them, by one of such commissioners; that the same was or were duly signed and acknowledged upon the day and year, or several days and years, mentioned in the caption, or several captions thereof; that the party or parties acknowledging, and also the commissioners taking the same were all of full age and competent understanding; that the *Femes Covert* (if any) were solely and separately examined apart from their husbands, and freely and voluntarily consented to and acknowledged the same; and that the conusor or conusors of such fine or fines respectively, and every of them, knew the same to be a fine or fines, to pass his, her, or their estate or estates; and that the tenant or tenants, and vouchee or vouchees, of such recovery or recoveries, in the caption or captions of

such warrant or warrants of attorney mentioned, knew that the same warrant or warrants of attorney was or were intended for suffering a common recovery to pass his, her, or their estate or estates; and also that the rasure or razures, interlineation or interlineations (if any) in the body or caption of such fine or fines, warrant or warrants of attorney, was or were made before the parties or any of them signed such fine or fines, warrant or warrants of attorney, and before the commissioners signed the said caption or captions: Which affidavit or affidavits, together with such fine or fines, and warrant or warrants of attorney, thereunto annexed, shall be transmitted to one of the Justices of this court for his allocatur thereon, and filed, so annexed, in the proper office.

The affidavit
to be made
by an attorney.

And it is further Ordered, That every such affidavit as aforesaid shall be made by some attorney or attornies of this court, or of some or one of the courts at Westminster, of the Great Sessions in Wales, or of the Counties Palatine of Lancaster or Durham, and sworn before a person duly authorized to take affidavits in this court (except where the person or persons, at the time of their acknowledging such fine or fines, warrant

or warrants of attorney, be within five miles of the castle of Chester during the time of holding the session for the said county of Chester, or in Scotland, or in Ireland, or in some other parts beyond the seas)—And in case the parties be within five miles of the castle of Chester, during the time of holding the Session for the said county, such affidavit shall be sworn before one of the Justices of this court; but if in Scotland, such affidavit shall be made by one of the clerks to the sygnet, and sworn before some person authorized to take affidavits in this court, or before one of the Judges, or other person duly authorized to take affidavits or depositions in the Court of Session or Court of Exchequer in that part of the united kingdom; and if in Ireland, or elsewhere beyond the seas, then the affidavit or affidavits shall be made by one of the commissioners, who hath taken such acknowledgment or acknowledgments, or a clerk to the sygnet, or an attorney of some court of record in the county where such acknowledgment shall be taken, and sworn either before some person duly authorized to take affidavits in this court, or before some judge, mayor, or other chief magistrate, in or near to the place where such acknowledgment shall be taken, having authority to

administer an oath, and in the presence of a public notary; which notary shall also certify in writing under his hand and seal, as well the due administering of the said oath, as also the name, signature, and office of the magistrate administering the same.

Copy of this rule to be annexed to each dedimus.

And it is further Ordered, That a printed copy of this rule be annexed to every dedimus potestatem at the time of issuing the same, for the information of all persons concerned; for which the sum of four pence each, and no more, shall be taken, *Chester, April 16, 1789: extended to the other three counties, April 2, 1790.*

The Form of an Affidavit of the due Caption of a Fine when made by a Commissioner.

In the court of Session at Chester,

Affidavit of due caption of a fine, by a commissioner.

A. B. of _____, in the county of _____, gentleman, one of the attornies of his Majesty's court of _____, and one of the commissioners named in the writ of dedimus potestatem hereunto annexed, for taking the acknowledgment of the fine hereunto also annexed,

maketh oath and saith, That he knows C. D. and E. his wife, and F. G. and H. his wife, the conuors named in the said fine, that the purport and effect of such fine was, at the time of the acknowledgment thereof, fully explained to each of them by this deponent (or by J. K. of _____ in the county of _____, one other of the commissioners in the said writ named, as the case may be) that the same was duly signed and acknowledged by the said C. D. and E. his wife, and F. G. and H. his wife, in the presence of this deponent, and of the said J. K. on the day and year (or several days and years) mentioned in the caption (or several captions) thereof; that the said C. D. and E. his wife, and F. G. and H. his wife, and also this deponent, and the said J. K. were at the time of taking and acknowledging the said fine, all of full age and competent understanding: That the said E. and H. were respectively, solely, and separately examined apart from their said husbands, and freely and voluntarily consented to, and acknowledged the said fine, and that the said C. D. and E. his wife, and F. G. and H. his wife, knew the same to be a fine to pass his, her, or their estate or estates. And this deponent further saith, that the razure or razures, interlineation or inter-

lineations (specifying them if any), appearing to be made in the body of the said fine, was (or were) made before any of the said conusors signed the same, and that the rasure or razures, interlineation or interlineations (specifying them also if any), appearing to be made in the caption (or several captions) thereof, was (or were) made before the said commissioners signed the said caption (or captions).

Sworn at	}	A. B.
in the county of		
the day of		
in the year of our Lord,		

Before me, L. M. a commissioner appointed for taking affidavits in the said Court of Session at Chester, (or otherwise as the case may be, if sworn out of England before a person not a commissioner of that court).

Or thus, if the Affidavit be made by a Person who is not a Commissioner.

In the court of Session at Chester,
 By a person A. B. of _____, in the county of
 not a com- _____, gentleman, one of the attor-
 missioner. nies of his Majesty's court of _____,

maketh oath and saith, that he knows C. D. and E. his wife, and F. G. and H. his wife, (the conusors named in the fine and writ of dedimus postestatem hereunto annexed) that the purport and effect of such fine was, at the time of the acknowledgment thereof, fully explained to each of them by J. K. of —————, in the county of —————, (one of the commissioners in the said writ named) that the said fine was duly signed and acknowledged by the said conusors on the day and year (or several days and years) mentioned in the caption (or several captions) thereof, in the presence of this deponent, and the said J. K. and also of L. M. of —————, in the county of —————, gentleman, one other of the commissioners in the said writ named, that the said C. D. and E. his wife, and F. G. and H. his wife, the conusors, and also the said J. K. and L. M. the commissioners who took the said acknowledgment (or acknowledgments) were at the time of taking and acknowledging thereof all of full age, &c. (as in the preceding form).

Sworn, &c. (as in the preceding form).

*The Form of an Affidavit of the due Caption of the
Warrant of Attorney of Vouchees in a Common
Recovery, when made by a Commissioner.*

In the court of Session at Chester,

Affidavit of
due caption
of a warrant
of attorney
in a common
recovery, by
a commis-
sioner.

A. B. of _____, in the county of _____, gentleman, one of the attornies of his Majesty's court of _____, and one of the commissioners named in the writ of dedimus potestatem hereunto annexed for receiving the attorney or attornies of C. D. and E. his wife, &c. (the vouchees named therein, and in the warrant or warrants of attorney hereunto also annexed) maketh oath and saith, that he knows the said C. D. and E. his wife, &c. that the purport and effect of such warrant or warrants of attorney, was, at the time of the acknowledgment thereof, fully explained to each of them by this deponent, or by J. K. of _____, in the county of _____, one other of the commissioners in the said writ named, as the case may be; that the same warrant (or warrants) of attorney, was (or were) duly signed and acknowledged by the said C. D. and E. his wife, &c. in the presence of this deponent, and of the said J. K. on the

day and year (or several days and years) mentioned in the caption (or several captions) thereof, that the said C. D. and E. his wife, &c. and also this deponent, and the said J. K. were at the time of taking and acknowledging the said warrant (or warrants) of attorney, all of full age and competent understanding. That the said E. was solely and separately examined apart from her said husband, and freely and voluntarily consented to and acknowledged the warrant (or warrants) of attorney aforesaid : that the said C. D. and E. his wife, &c. knew that the said warrant (or warrants) of attorney was (or were) intended for the suffering of a common recovery to pass his, her, or their estate or estates. And this deponent further saith, that the rasure or razures, interlineation or interlineations, (specifying them if any) appearing to be made in the said warrant (or warrants) of attorney, was (or were) made before any of the said vouchees signed the same ; and that the rasure or razures, interlineation or interlineations, (specifying them also if any) appearing to be made in the caption (or several captions) thereof, was (or were) made before the said commissioners signed such caption (or captions). A. B.

Sworn, &c. (as in the first preceding form).

*Or thus, if the Affidavit be made by a person who
is not a Commissioner.*

In the court of Session at Chester,
By a person not a commissioner. A. B. of _____, in the county of _____, gentleman, one of the attorneys of his Majesty's court of _____, maketh oath, and saith, that he knows C. D. and E. his wife, &c. the vouchees named in the writ of dedimus potestatem, and warrant (or warrants) of attorney hereunto annexed, that the purport and effect of such warrant (or warrants) of attorney was, at the time of the acknowledgment thereof, fully explained to each of them by J. K. of _____, in the county of _____, (one of the commissioners in the said writ named) that the same warrant (or warrants) of attorney was (or were) duly signed and acknowledged by the said vouchees on the day and year (or several days and years) mentioned in the caption (or several captions) thereof, in the presence of this deponent and the said J. K. and also of L. M. of _____, in the county of _____, gentleman, one other of the commissioners in the said writ named; that the said C. D. and E. his wife, &c.

the vouchees, and also the said J. K. and L. M. the commissioners who took the said acknowledgment (or acknowledgments) were, at the time of taking and acknowledging thereof, all of full age, &c. (as in the preceding form).

Sworn, &c. (as in the first preceding form).

II.

PLEAS OF THE CROWN.

-
- § 1. *Examination and Recognizances.*
 - § 2. *Presentment.*
 - § 3. *Habeas Corpus.*
 - § 4. *Respite of Fines and Process.*
 - § 5. *Execution.*
-

§ 1.

Examinations and Recognizances.

Justices
of Peace
must return
examinations
and recogni-
zances on 1st
day of ses-
sion.

ORDERED, That all Justices of the Peace do henceforth return into court the examinations and recognizances by them respectively taken, upon the first day of the sessions, and that prosecutors and witnesses bound over do appear the next morning; otherwise their recognizances to be for-

feited, and that the Justices do make the default-
ers to forfeit £5. a-piece. *Chester, 29th March.*
2 *Ja. II.*

§ 2.

Presentment.

ORDERED, That no person upon his appear-
ance by the King's attorney's warrant shall be
compelled to traverse or submit to a presentment,
without it be drawn into an indictment first, but
shall be admitted first to have a copy of the pre-
sentment. *Chester, 29th Sept. 2 W. & M.*

Present-
ments must
be drawn
into
indictments
before tra-
versed or
submitted
to.

§ 3.

Habeas Corpus.

HABEAS CORPUS was granted upon affidavit
to bring up a child four months old, which had
been taken from its mother by the putative father;
and the child was brought into court, and deli-

To bring up
a child ta-
ken from its
mother by
its putative
father.

vered by order of the court to the mother. *R. v. Edwards, Sept. 2d, 1791. Pool. Sess.*

To bring up a child taken by its grandmother from its mother.

The like writ, against Cath. Williams the grandmother, in order to deliver a child to its mother; but upon production of the child, and hearing counsel, the child was ordered to remain with the grandmother, with liberty to the mother to see it at all seasonable times. *Mold, April 7th, 1792.*

Habeas Corpus to bring up prisoner for discharge upon commitment.

On motion of Attorney General, habeas corpus was ordered to issue, directed to the keeper of the House of Correction at Ruthen; whereby he was commanded to bring up the body of Ellis Martin, committed by warrant upon conviction before a Justice of the Peace: The next day, the prisoner was brought up, and the keeper returned the warrant as the cause of commitment, whereby it appeared that the prisoner was committed in execution upon a conviction for cutting down two ash trees, upon Stat. 6 Geo. III. c. 48, §. 1 & 2, for which the prisoner was sentenced not only to the punishment of six months imprisonment under this act; but also to a whipping once in each month, according to 1 Geo. I. Stat. 2. c. 48, and

6 Geo. I. c. 16; and it did not appear, that the prisoner had refused to pay the penalty to be inflicted by 6 Geo. III. c. 48, so as to warrant any imprisonment whatever: The Court being therefore of opinion, that no sufficient cause of commitment appeared, Ordered the prisoner to be discharged forthwith. *April 7 & 8, Wrexham, 1791.*

§ 4.

Respiting Fines and Process.

MAUR. EDWARDS pro verbis seditiosis, recognizance respited and not to be estreated, because oath was made of his being sick and unable to travel. *Denbigh, Mar. 1 Jac. II.* Recognizance respited.

Ordered, That no issues be estreated, but after the next Session wherein the issue returned, or party fined or amerced. *Denbigh, 4 Jac. II.* Issues estreated.

Ordered That no process or fine be stayed or respited, upon any indictment or presentment for not repairing highways; unless, the overseers of Oath and certificate as to repairs of highways

before process stayed or fine respited.

such highways make oath, what sum or sums of money have been laid out and expended, and after what manner, for and towards the repair of such highways; and that the same have been well and sufficiently repaired and amended: and also that such highways be viewed by two of his Majesty's Justices of the Peace, who shall upon view of such highways see that they are well and sufficiently repaired, and certify accordingly at the next assizes to be held for the said county, together with an account of the manner and order of such repairs. *Chester, 29th Sept. 7 Geo. I.*

§ 5.

Execution.

Execution of prisoners.

ORDERED, That the execution of Thomas Rudge be upon Monday the 4th day of October next; and that the execution of Maurice Jones be upon Monday the 18th of October next, per Lord C. J. Charlton. *Denbigh, 2d Oct. 1686.*

Further Ordered, That the execution of Thomas Rudge be respited till Monday 11th October next, upon which day execution is to be done; and that the former Rule about Maurice Jones do stand. *Denbigh*, 1686. Execution respited.

III.

PROCEEDINGS IN CIVIL ACTIONS.

§ 1. *Appearance Process.*

§ 2. *Pleadings.*

§ 3. *Trial.*

§ 4. *Judgment.*

§ 5. *Error.*

§ 6. *Execution.*

§ 1.

Appearance Process.

Writs to be
returned by
Sheriff.

Ordered, That no Writs be received into the office, unless returned by the sheriff. *Denbigh, Sept. 1 W. & M.*

Suits removed from Inferior Courts.

Prohibition
when to be
moved for.

ORDERED, That there shall not be made a motion for a Prohibition after the four first days of the Session; and that a suggestion may be filed after motion. *Denbigh, Sept. 8 Ann.*

Ordered, That if the Certiorari be not returned, Certiorari to be returned, or else null. the plaintiff below (viz. in Pool Court) may go on without a procedendo; a Certiorari being no supersedeas. *Pool. 4 W. & M. Lloyd v. Ward.*

Ordered, That all writs of Certiorari returnable in this court, together with the record thereupon, Certiorari when to be filed, and when to be tried. be filed on or before the second court on the second day of the Session wherein such Certiorari is returnable; and that the defendant in such record do try the same that Session. *Chester, 22d April. 3 Geo. I.*

Ordered, That in all cases wherein a writ of Procedendo or Ne Recipiatur error, certiorari, recordari, pone, or false judgment, shall have been sued out, and not returned and filed before the rising of the second court of the session or assizes at which the same is returnable; a writ of Procedendo may be awarded, or Ne Recipiatur entered. *Chester April. 23 Geo. III.*

Ordered, That after plaintiff has removed his In replevin how to proceed. plaint in Replevin, he do next call upon defendant by rules to appear; and that if he sign judgment for want of a plea, without calling to appear,

the same be set aside for irregularity. *Salisbury v. Jones. Mold, Aug. 25th, 1792. N. B.* The Prothonotary certified this to be the practice, as he found by former precedents.

Certiorari
out of Chan-
cery not re-
ceived after
judgment by
default in
Great Ses-
sions.

N. B. After judgment by default in the Great Sessions, defendant moved that a Certiorari, issued out of the High Court of Chancery for removing the proceedings in this cause, might be filed; and a return made thereon to the Court of Chancery, according to the exigency of the writ: But, upon the officer's certificate that the practice was contrary, and on account of the ill use that might be made of such proceeding, THE COURT refused the motion. *Owen v. Oswey. Pool, Aug. 14th and 15th, 1792.*

Original Suits, how commenced.

Suits may be commenced upon the Old Rule; or (in certain actions) on the New Rule; or by Clausum Fregit; and also by Vacation Process, under Stat. 13 Geo. III.

On the Old Rule.

Upon the old rule ; no previous notice need be **Old Rule.** given to defendant ; and plaintiff may obtain judgment against defendant for want of appearance, after calling him to appear ; at three courts, if defendant do not then appear, and at 28 days (being the ordinary day) after the end of the Sessions, he may take out execution ; filing his declaration, and certifying his debt upon oath : unless defendant within the 28 days pay *5 s. 6 d.* being the costs of his contempt, and enter an appearance ; in which case plaintiff must file his declaration before the sitting of the first court of the next Great Sessions :

Or if defendant do appear at or before the third court, when called in open court, the plaintiff may obtain judgment against him by default or confession :

Or plaintiff may force defendant to trial at the same Great Sessions ; Thus, upon appearance entered at the third court, plaintiff may file his declaration ; and then call defendant to plead, which

defendant must do in two courts more, *i. e.* at or before the rising of the fifth court; then plaintiff must add the similitur; and before the office shuts that evening enter his cause with the marshal; the venire is then called at the sixth court, and the habeas corpus at the seventh; and the trial may be at the eighth or ninth court. *Thomas Gregory Hancox v. Overseers of Mold, cor. Morton, C. J. 1779.*

Upon the possibility of this practice: Plaintiff having called defendant to appear at the third court, who appeared accordingly; and plaintiff having then filed his declaration, defendant then moving for time to plead till the ordinary day; THE COURT refused the motion; because plaintiff had a right to force defendant to trial at the then Great Sessions. *Pool, Aug. 10, 1790.*

On the New Rule.

New Rule.
Notice to be
given before
commencing
any personal
action.

For preventing of delays in all personal actions hereafter to be commenced in this Court, It Is Ordered, That the defendant or defendants in such actions being served fifteen days before any Great Session (which service to be exclusive of the day

of service, and the first day of that session) with notice in writing under the hand of the plaintiff's attorney, expressing the cause of the action, and the sum demanded; upon affidavit made of such notice and service, and filing a declaration before the sitting of the forenoon court on the second day of the same Great Sessions, the plaintiff or plaintiffs shall be at liberty to proceed to trial or judgment therein at the said Great Sessions: and in case the defendant or defendants do appear to any such actions brought as aforesaid, and shall neglect to plead to the said action at the next court, a rule being given for that purpose, the plaintiff shall at the prayer of his attorney have judgment by nihil dicit. *Mold, Mar. 8 Ann.*

Ordered, That the affidavit of such notice and service upon the New Rule and such declaration may be filed, not only before, but even during the sitting of the forenoon court of the second day of the Great Sessions. *Pool, Mar. 25 G. III.*

Filing affidavit and declaration.

Ordered that defendant having been served on the New Rule do plead on the second day of the Great Sessions. *Per Noel, C.J. Pool, March 1755.*

Pleading to declaration on the New Rule.

Service of notice on New Rule.

Ordered, That the service of notice, upon the New Rule, be the same as in the service in ejectment. *Mold, Sep. 9 Ann.*

Notices how to be served.

Ordered, That all affidavits of the service of notice in ejectment, and also of the service of notice in personal actions according to the New Rule and in all other cases whatsoever, where the person making the affidavit is to swear to the delivery of a true copy of any rule or notice in writing, the affidavit shall be made by persons capable of reading such rules and notice, and of subscribing their names to such affidavits: and that no affidavit for the future made or sworn by any other person, or in any other name than as aforesaid, shall be admitted in any of the said cases: And this rule is to be in force in the counties of Denbigh, Flint, and Montgomery. 5 G. II.

Service of process may be sworn before the prothonotary's special deputy.

Affidavits of the service of mesne process sworn before an attorney at law, being a deputy appointed by the Prothonotary for taking affidavits of debt and service of process, are well sworn; and an appearance having been entered for defendant according to the statute, and an interlocutory judgment thereupon obtained; It was Ordered,

That the judgment should stand. *Chester*, 1
Apr. 31 Geo. II. Hesketh v. Clarke.

Resolved, That the notice upon the New Rule is not the commencement of the suit, so as to exclude the proof of subsequent tender. *Rutbin*,
Oct. 1793. Penson v. Churchwardens of Wrex-
ham.

When notice not regarded as the beginning of a suit.

By Clausum Fregit.

Ordered, That the attornies of this court may proceed in all personal actions by filing an original writ or queritur in Clausum Fregit, so as to warrant the capias thereupon ; and shall be at liberty, at the Session on which the said capias is returnable, to sue out a New Original or queritur, according to the nature of the case, and proceed to trial according to the New Rule. *Mold, March,*
8 Ann.

Clausum fregit and new original when to be had.

Ordered, That the attornies here may proceed in all actions of debt, trespass, or case by filing an original writ in Clausum Fregit, tested 15 days before the assizes wherein the capias issues, so as

The like in Chester.

to warrant the *capias* thereupon, as is usual in Lancashire ; and be at liberty afterwards to sue out a new original, according to the nature of their case. *Chester 18th Apr. 10 W. III.*

Process in
trespass and
in case.

In trespass on the case, for breach of special contract, defendant not appearing after being twice called at the former Great Sessions, THE COURT ordered a *distringas* to issue returnable the next day. *Holland v. Hugbes & an. Mold. Apr. 1789. N. B.* This proceeding by *distringas* in such actions is directed by Pract. Wall. p. 4 and 15.

In Cheshire. Whereas, inconveniences have arisen by reason of Original Writs issuing out of the Court of Exchequer at Chester, returnable here ; which according to the rules and practice of this court, are tested 15 days before the assizes next preceding the suing out thereof, and of writs of mesne process issuing out of this court, which according to the rules and practice thereof are tested the last day of the assizes next preceding the issuing of such writs ; and also writs of *latitat* and attachment of privilege issuing out of this court, which according to the rules and practice there-

of are tested the last day of the assizes next preceding the issuing of the same; In consequence whereof, it frequently appears upon trials that the causes of action wherein such suits are commenced have arisen subsequent to the teste of such original writs, though previous to the suing out the process thereon; For remedy thereof;

It Is Ordered, That every writ of *capias ad respondendum*, *latitat*, attachment of privilege, and other mesne process issuing out of this court, shall be indorsed by the Prothonotary with the day, month, and year whereon the same shall be actually sued out: And that no advantage shall be allowed to be taken, by reason of any pleading being filed or evidence given, that the cause of action arose subsequent to the teste of the original writ whereon such mesne process was founded; so that it do not appear upon the trial that the cause of action did not arise till after the issuing of the writ of *capias ad respondendum*, *latitat*, attachment of privilege, or other mesne process issuing out of this court in such cause. *Chester, Apr. 23 Geo. III.*

Mesne process to be indorsed with the date of issuing.

No advantage to be taken by reason of the cause of action arising after the teste of the original writ.

By Vacation Process.

Suit by vacation process, Stat. 13 G. III.

Suits may be also commenced by process returnable in vacation, Stat. 13 Geo. III. c. 51. § 15; whereupon plaintiff may enter common appearance for defendant who neglects to appear in 14 days after the return.

Ejectments.

Notice 15 days before Sessions.

Ordered, That notice in ejectment be given 15 days before the Session in which the action is brought. *Denbigh, Sept. 19 Car. II.*

Flintshire, Rule for appearances, &c. 14 days before Session.

Whereas the former rules and proceedings in ejectment in the county of Flint are found by experience greatly to hinder the speedy course of justice, which in other courts is remedied by more summary proceedings, For preventing therefore of unnecessary delays in the said court for the future;

It Is Ordered by the Court, That a rule day shall be given before the Prothonotary of the said court of Flint, in the castle of Chester, or some other convenient place, on Monday fortnight next

before any Great Session for the said county of Flint; at which time all appearances, pleas, and issues in ejectione firmæ shall be received and joined, in order to be tried the next Session :

And for want of appearance in the tenant or tenants in possession, or want of pleading in such actions, judgment shall be entered by the Prothonotary against the plaintiff's own ejector, if the declaration in such actions and notice given to the said tenant or tenants in possession be filed in the said office a month before the said rule day:

Judgment for want of appearance; the declaration and notice being filed a month before rule day.

And it is further Ordered, That the affidavit of such notice being given to the tenant or tenants in possession as aforesaid shall afterwards be sworn in court, before any execution shall be awarded on the said judgment against the plaintiff's own ejector; and if no such affidavit be made of such notice, on or before the second morning in the said next Session, that then such judgment or judgments shall not be entered as of that Session :

Affidavit of notice sworn before execution, and when.

And it is further Ordered, That this order be

published by affixing the same in the Prothonotary's office, or in any other place proper for that purpose. *Flint, Apr. 24 Car. II.*

New rule
for serving
declaration
21 days be-
fore Great
Sessions.

For preventing unnecessary delays in actions of ejectment, It Is Ordered by the Court, That upon service of declaration in ejectment 21 days exclusive before the first day of the Great Session, with notice for the tenant or tenants in possession to appear and plead on or before the second day of the same Session, so as the plaintiff may go to trial, and upon affidavit of such service, and motion thereupon in open court the forenoon of the aforesaid second day of the said Session; unless the tenant or tenants in possession do appear and plead according to such notice, judgment shall be given against the casual ejector: but if the tenants do appear and plead as aforesaid, the plaintiffs may proceed to trial the same Session: And It Is further Ordered, That public notice of this order be given by affixing the same in the Prothonotary's office. *Denbigh and Flint, 9 W. III.*

Appearance
on second
day of Ses-
sions and
judgment or
trial there-
upon.

In Cheshire,
service on or
before the

The like rule; except that service of the declaration must be "on or before the first day of the

term next before the Session with notice, &c.
Chester, 20th Sept. 9 W. III.

first day of
the term be-
fore Great
Sessions.

Ordered, That for the future no ejectment shall be moved upon the Old Rule but where the tenant in possession is served with notice 15 days at least before the Sessions exclusive of the day of service. *Chester 6 Apr. 24 Geo. II.*

On the old
rule notice
to be 15 days
before Great
Sessions.

Ordered, That in proceeding on the new rule in ejectment, if the plaintiff doth not proceed to trial at the sessions or assizes next after the service of his declaration and notice, the tenant or tenants in possession, or other person or persons who shall appear to be prepared to defend for the lands and premises in question, shall at the discretion of the court be intitled to costs against the lessor or lessors of the plaintiff for not going on to trial ; unless such lessor or lessors of the plaintiff, or his, her, or their attorney shall give notice in writing to the tenant or tenants in possession of the premises in question, either in person or by leaving the same at his, her, or their respective dwelling houses, eight days at least previous to the assizes next after such declaration shall be served, exclusive of the day of the deli-

On the new
rule notice of
not going to
trial eight
days before
assizes, else
costs.

very of such notice, and of the first day of such assizes, that he or they will not proceed to the trial of such ejectment at that assizes. *Cbester, 14 Apr. 1783.*

Service of
notice sworn
by lessor of
plaintiff bad

Ordered, That notice sworn by the lessor of the plaintiff in ejectment be insufficient. *Denbigb, Sept. 4 W. & M.*

Service on
mother of
tenant bad.

Ordered, That service in ejectment upon the mother of the tenant in possession be insufficient. *Denbigb. 2 W. & M.*

Service on
son bad.

Ordered, That the service in ejectment on the son be insufficient; except it appear that the father had notice. *Denbigb, Sept. 1 W. & M.*

Service by
persons able
to read and
write;

Ordered, That none shall be admitted to swear the service in ejectment, but such as can read the notice, and subscribe their names. *Denbigb. 2 W. & M.*

Affidavit by
person pre-
sent good.

Ordered, That affidavit in ejectment of deponent who was present and saw another person deliver a copy of the declaration and notice under-

written, the party who served being illiterate, be sufficient. *Mold, March. 3 W. & M.*

Ordered, That all affidavits of the service of notice in ejectment, &c. and in all other cases, &c. shall be made by persons capable of reading, &c. and subscribing, &c. *Denb. Fl. Montg. 5 Geo. II.*

Service by persons able to read and write.

In a joint affidavit, one deponent swore that he delivered a true copy of the ejectment and notice to the other deponent, and informed him of the contents, and signed the affidavit with his name: the other deponent swore he served the said copy on the tenant in possession, and informed him of the contents, and signed the affidavit with his mark; THE COURT Resolved this to be a bad service; For the court will not vary from the rule, it being taken from the rules in the courts above, which do not admit service by an illiterate person, because they require the copy to be read to the tenant. *Pool, Sp. Sess. 1751.*

Joint deponents must be able to read and write.

Essoin.

Essoin when to be cast. Ordered, That every essoin be cast on calling the writ ; or be not allowed.

Where it lies. An essoin to be allowed upon the iterum summoneas, second or third bill, distringas, &c. if there be no essoin cast before on the original, and that before issue ; but after issue one essoin, and that on the venire facias only.

No essoin in scire facias. No essoin to be allowed on a scire facias brought on a former judgment.

Essoin to put off one day. An essoin to be cast for one day only, viz. till next day.

Appearance.

On scire facias. Upon every scire facias upon new and old judgment in personal actions, three rules to appear. *Denb. Fl. Montgomery.*

Notice of all vacation appearances Ordered, That notice in writing of all appearances and rules and filing of pleadings, entered

and filed in the vacation in all actions commenced in this court, shall be given under the hand of the attorney for the party entering or filing the same, or his agent in Chester; to the opposite party, or to his attorney, or to the agent for such attorney in Chester; by personal service, or by leaving such notice, or a copy thereof, at the office or dwelling house of such party, attorney, or agent, within six days next after the entering or filing thereof: and that no judgment, nonpross, or other proceeding in consequence of such rule as aforesaid shall be had or taken by any party entering such rule, who shall have neglected to give such notice thereof as aforesaid. *Chester, 14 Apr. 1783.*

pearances,
&c. under
the attorney's hand.

Ordered, That no defendant in custody upon mesne process be at liberty to enter an appearance either in person or by attorney, or to call upon the plaintiff to proceed, in the vacation; but shall during the course of the assizes be considered as in court, and during that time may (upon having given such notice as before mentioned) call upon the plaintiff to charge him with a declaration, and to file such other proceedings against him as such defendant might do in case special bail had been entered. *Chester, 14 Apr. 1783.*

Defendants
in custody
not to enter
appearance
in vacation.

Bail.

**In certiorari
no bail by
administra-
tors.** Ordered, That in certiorari the plaintiffs having found bail in the court below, they shall not be bound to give bail here, being as appears administrators. *Mold. 2 W. & M.*

**No bail in
slander.** Ordered, That in all actions of slander no bail be given. *Denbigh, Marcb. 11 W. III. and Sept. 10 Ann. Mold S. rule.*

**No attorney,
sheriff's of-
ficer, &c.
to be bail.** Ordered, That no attorney of this or any other court, nor any bailiff, sheriff's officer, or other person concerned in the execution of process, be permitted to be bail, or to give any undertaking for the entering of bail, or for the personal appearance or surrender of any defendant in any action or suit depending in this court. *Chester, 14 April, 1783.*

**Notice of
special bail
to be given.** When special bail is put in to any action depending in this court, the defendant's attorney or agent shall, within six days after such bail is taken, give notice thereof in writing to the plaintiff's attorney in Chester, or his agent there, of the names

of such bail, with their places of abode and additions; by delivering such notice, or a certificate of the entry of such bail, under the hand of the Prothonotary or his deputy, to such attorney or agent, or leaving the same at his dwelling house or office in Chester. *Chester, 14th Apr. 1783.*

And if the plaintiff or plaintiffs, his, her, or their attorney or agent shall be dissatisfied with such bail, he or they shall be at liberty to except against the same, by an entry in the Prothonotary's rule book, within fourteen days next after such bail is entered. *Chester, 14th Apr. 1783.*

And if no exception be entered as aforesaid, such bail shall be deemed sufficient; and in case such exception be entered in the vacation, the bail shall justify in open court, during the sitting of the first court of the then next assizes; and if such exception be entered during the time of any assizes, or the defendant's bail be called by rule of court or motion to justify, such bail shall justify in open court, some time in such assizes; and for want of such justification, the plaintiff is to be intitled to an assignment of the bail bond. *Chester, 14 Apr. 1783.*

How to except.

How to justify.

and when bail-bond may be assigned.

Bail discharged by exoneratur or memorandum. And that no bail shall be considered as discharged (though the principal be surrendered) unless an exoneratur be entered on the bail piece, or a memorandum made in the Prothonotary's book of such bail being discharged. *Chester, 14 Apr. 1783.*

§ 2.

Pleadings.

Pleadings to be written fair. ORDERED, that the Prothonotary refuse to receive any pleadings in paper that are not fairly written without blots. *Denbigb, Mar. 3 W. & M.*

Pleadings to be marked with the time of filing. Ordered, that the Prothonotary do mark all the pleadings filed during the Great Sessions, with the time at which they are filed, viz. between what courts; or at what court. *Rutbin, Mar. 30, 1792.*

When to be received. Ordered, That pleadings, &c. shall be received at any time before judgment actually signed, as well in vacation as during the Great Sessions, notwithstanding the time allowed for the plea, &c. is expired. *Evans v. Lloyd, Pool, Aug. 30 G. III.* But quære, in Ejectment? *Pool, Aug. 31 Geo. III.*

Ordered, That after writ, but before declaration, an infant plaintiff have leave to sue by his next friend, naming him in the motion. *Hughes v. Roberts, April 5, 1792.*

Infant to
sue by next
friend.

When the party cannot by the practice be compelled to try at the then sessions, the court will grant time for declaring, &c. till the ordinary day. The ordinary day is, one month from the expiration of the Great Sessions for appearing or clearing contempts, two months to declare, and three months to plead.

Ordinary
day.

Memorandum upon the report of Mr. Norbury and Mr. Whishaw of a conference had with other attornies about the rules to be given in the assize week, to declare, plead, reply, &c.; and likewise upon inspection of old rules and memorandums; It Is Ordered, That no more than one rule be given for each pleading, unless the time be enlarged upon motion. *Cbester, 29 March, 1733.*

In assize
week only
one rule for
each plead-
ing.

Ordered, That in all causes where any plaintiff or defendant shall be called in open court to proceed to file or enter any pleading, the party so

In assize
week how
long to file
pleadings.

called upon shall have time until the rising of the subsequent court to file or enter the same. *Chester, 14 April, 1783.*

On appearance entered by or for defendants under Sta. 6 G. II. c. 14.

Whereas, by a statute made in the sixth year of the reign of his late Majesty King Geo. II. c. 14. § 1. It is enacted, that in all personal actions commenced in the courts of Great Sessions in Wales, and court of Assize in the County Palatine of Chester, where the debt or damages expressed in the process, or declared for, does not amount to the sum of £10. and the defendant or defendants shall be served with a copy of an original writ or process issuing of such courts respectively, at least eight days before the commencement of the said courts of Session and Assize, in case the defendant or defendants do not appear to such action at or before the third court of the Great Sessions or Assizes next after such process issues, that then it shall and may be lawful for the plaintiff or plaintiffs, or his, her, or their attorney (upon affidavit being made and filed in the proper court of the personal service of such writ or process) to enter an appearance for such defendant or defendants, and to proceed thereon as if the defendant or defendants had entered his,

her, or their appearance to such action or actions; notwithstanding which statute the defendant or defendants in such actions, by the present rules and practice of this court, cannot be compelled to try the same at the session or assizes at which such appearance is entered; which often proves a great delay of justice :

It is therefore Ordered, That in all such causes as aforesaid, where the defendant or defendants shall enter his, her, or their own appearance; or (on his, her, or their default) the plaintiff or plaintiffs, or his, her, or their attorney, shall enter an appearance for such defendant or defendants according to the said statute; (the plaintiff or plaintiffs, or his, her, or their attorney having filed a declaration with the Prothonotary at or before the sitting of the first court of the Session or Assizes next after such process issued, and served); the defendant or defendants shall plead to such declaration on or before the third court of the same Sessions or Assizes; unless the court, on motion for that purpose made, shall see cause to give the defendant or defendants in such cause further time to plead to such declaration of the plaintiff.

Declaration being filed at the first court the defendants must plead on or before third court.

Chester, 21 April, 10 Geo. III.

Particular of
demand and
of set off.

Ordered, That in future it be a motion of course, for plaintiff to deliver to defendant an account in writing of the particulars of his demand in concessit solvere; and the like for defendant to deliver to plaintiff a particular of the set off he means to prove at the trial. *Wrexham, Davies v. Williams, April 6, 1791.*

Declaration.

Concessit
solvere lies
for executors
&c.

Resolved, That the practice of the court by ancient custom has been that concessit solvere lies in behalf of an executor or administrator for a debt due to his testator or intestate. *Denb. Fl. Mont. April 4 Jac. II.*

Rules to de-
clare.

Three rules to declare. *Denbigb, 5 W. & M.*

Declaring in Suits from inferior Courts.

When to de-
clare in suits
from below.

Ordered, That if a plaint be removed by recordari, pone, certiorari, or otherwise, from any inferior court to the Great Sessions, and the defendant appear by attorney, and give three rules to declare; and if the plaintiff be thereupon non-suited, the defendant do not have costs besides the

amerciament of 3d; and that the amerciament be not increased. *Denbigh, Flint, Montgomery.*

Declaring on the Old Rule.

Ordered, That all common declarations in debt and trespass, and all other declarations wherein judgment is had by default or confession, shall be filed on Friday night (*i. e.* 5th day and 9th court) of the same sessions wherein the action is brought, at or before the performing of rules; and that in special declarations in actions on the case, or other actions where the pleading may be difficult, the plaintiff shall have, if it be desired, all the ordinary day, and the defendant have further time to plead. *Denbigh, Flint, Montgomery, 24 Car. II.*

Declarations common and special when to be filed.

Declaring on Vacation Process.

Ordered, That in all cases where the writs or mesne process of this court shall be made returnable upon the first Wednesday in any month in either of the two vacations, and the defendant or defendants having been served with a copy or copies thereof, shall enter an appearance thereto:

When to declare on writ returnable in vacation.

Mold, 13th April, 1775. [Or where the plaintiff shall enter a common appearance under the statute ; which is the same thing, within the meaning of this rule. *Evans v. Jones, Pool, March 29th 1791.*] And where the plaintiff or plaintiffs shall omit to deliver a declaration therein seven days before the first day of the session next ensuing the return of such writ, pursuant to the statute made in the 13th year of the reign of his present Majesty King George the Third, intituled, "An act to discourage the practice of commencing frivolous and vexatious suits in his Majesty's courts at Westminster, in causes of action arising within the dominion of Wales, and for further regulating the proceedings in the Court of Great Sessions in Wales." That the plaintiff in such action shall proceed to file his declaration with the Prothonotary of this court, before the rising of the second court of such Great Sessions then next ensuing to be held in and for the said county of Flint ; or for want thereof, the defendant or defendants in such action shall be intituled to a nonpross. *Mold, 13th Apr. 1775.*

On motion, at such second court, for time to declare till the ordinary day ; The Court refused it

for want of specific circumstances in the affidavit made in support of the motion. *Evans v. Jones, Pool, March 29, 1791.*

Ordered, That notice in writing of all appearances and rules, and filing of pleadings entered and filed in the vacation, &c. &c. *Chester, 14th Apr. 1783.* (See this rule at length under title *Appearance*, p. 44.) Vacation pleadings to be filed with notice.

Declaring in Ejectment.

Ordered, That all declarations in ejectment, and motion thereupon for judgment against the casual ejector, be moved and filed on or before the second day of the Sessions. *Mold, April, 20 Car. II.* Of filing declaration in ejectment.

Ordered, That if the declaration in ejectment be not filed before the sitting of the first court of the second Session, it shall not be taken as a declaration of the first Session. *Mold, Sept. 2 W. & M.* The like.

Declaring against Prisoners.

When to declare against prisoner on mesne process.

Ordered, That in all cases where a defendant is a prisoner upon mesne process, such defendant shall be deemed to be in court, as if he had appeared to the action; and unless the plaintiff in such action shall file his declaration, on or before the sitting of the second court of the Assizes or Sessions after which such defendant was committed to gaol, such defendant shall be discharged out of prison, upon entering common bail. *Flint, Denb. and Montg. Apr. 1767.*

Distinction between process returnable before Great Sessions, and on first day of Great Sessions.

Ordered, That where a defendant is in custody on any mesne process returnable seven days or more before any Great Sessions, the plaintiff or plaintiffs shall be bound to declare against every such defendant, on or before the first day of such Great Sessions; and where a defendant shall be in such custody on any mesne process returnable the first day of any Great Sessions, the plaintiff or plaintiffs shall be bound to declare against every such defendant on or before the second court of such Great Session; so as that the defendant or defendants may plead thereto, and

bring the action to trial the same Great Session.
Mar. Sess. 15 Geo. III.

After the filing of the plaintiff's declaration as aforesaid, if such defendant shall plead an issuable plea, so as that plaintiff can by the rules of the court proceed to trial that same assizes; It Is Ordered, That such defendant shall be discharged out of prison upon entering common bail; unless such plaintiff shall proceed to try his cause that same Assizes or Great Session in which his declaration is filed. *Flint, Denbigb, and Montgomery, April Great Sessions, 1767.*

Supersedes
for want of
declaration
or not pro-
ceeding to
trial.

Amending Declarations.

Plaintiff having called defendant on the Old Rule as executrix, and then declared against her in her own right, to which the defendant had pleaded non concessit; The Court Ordered, That the plaintiff have leave to amend without costs, by inserting in the declaration that "defendant as executrix of J. W. granted herself," &c. and that the same plea do stand to the amended declaration, with leave for defendant to file any additional plea. *Davies v. Williams, Apr. 5th, 1791. Wrexham.*

Amendment
of declara-
tions, upon
what terms.

*What Declarations may be tried at the Sessions
of which they are filed.*

Declarations filed before first court.

All declarations that come in before the sitting of the first court shall be received, and may go on to trial at that Session. *Denbigh, Flint, and Montgomery.*

But not declarations filed in sessions week, though in actions brought in a former session.

But all declarations filed in the Session week, in any actions brought and appeared unto in a former Session, shall be received as declarations of that Session in which they are filed: and such actions shall not be tried at that Session in which such declarations are filed. *Denbigh, Flint, and Montgomery. 18 Car. II*

Plea, &c.

Three rules in real, and two in every other action.

After appearance and declaration, three rules to plead in every real action; and two in every personal, mixt, or popular; and the last peremptory. *Denbigh, Flint, and Montgomery, March. 2 Jac. II.*

One rule to reply, &c.

After a plea, one rule for replication, rejoinder, sur-rejoinder, rebutter, and sur-rebutter.

Denbigb, Flint, and Montgomery, March. 2
Jac. II.

Upon a similis narr. upon a view, sum. ad warr. One rule in other instances.
 ad auxiliand. and upon a challenge; one rule only, and that peremptory; after imparlance one rule. *Denbigb, Flint, and Montgomery, March. 2 Jac. II.*

Upon every scire facias upon new and old judgments in personal actions, three rules to appear; and after appearance two rules to plead, and that peremptory: but upon a judgment of ten years standing no scire facias to be granted, without motion in court, unless it be continued by process. *Denbigb, Flint, and Montgomery.* What rules to plead in scire facias.

The petit visum et auditum in real actions, is to be between the second and third rule; and the petit auditum in personal actions, between the first and second rule. *Denbigb, Flint, and Montgomery.* When to demand view and oyer.

Between the First and Second Rule, oyer ought to be had, and not afterwards. *Denbigb, March. 2 Jac. II.* Oyer.

Oyer craved by counsel. If the defendant neglect to demand oyer of a bond, between the first and second rule, it must afterwards be moved by counsel. *Mold. 2 W. & M.*

Oyer on affidavit. The defendant cannot demand oyer of a deed ; but upon affidavit that he has no counterpart he shall have a copy. *Mold, March. 3 W. & M.*

What pleas to be signed by counsel. Ordered, That all pleas concluding with averment, (except a general plea of fully administered) by threats, and duress, nul tiel record, ne unques exōr. solvit ad diem, comperuit ad diem, liberum tenementum, non dimisit, and riens per descent, be signed by counsel, or not received. *Chester, 15th Aug. 26 Geo. II.*

Amending plea, infant to plead by guardian. Infant having pleaded to a declaration for assault by attorney instead of guardian ; Ordered, That the defendant have leave to amend. *Pugh v. Salter, Aug. 30, 1791.*

Suggestion entered. Upon affidavit that the tenant is dead, leave to suggest the death in scire facias. *Mold, Apr. 1 W. & M.*

Ordered, That no dilatory plea to be received without affidavit annexed; except to jurisdiction of the court. Dilatory pleas.

Ordered, That after a general imparlance, no plea in abatement be received. *2 W. & M.*

Ordered, That in all actions where solvit ad diem, and condition performed, or such issuable pleas, are pleaded; if the same pleas be not drawn in paper, and filed after the next court, the plaintiff shall proceed with his rules to judgment, notwithstanding such plea pleaded on the calling of the rules in court. *Denbigh, March. 11 W. III.* Issuable pleas when to be filed.

Whereas, between each assizes in the vacation here, there is no rule made or time given for bringing in or filing replications, rejoinders, demurrers, joinders in demurrer, entering similiter, or any other pleading after the first plea, the want of which is very dilatory and inconvenient; For Remedy thereof; It Is Ordered by this Court, that in vacation time all pleadings (after the first plea) be filed within six weeks after the expiration of the next preceding rule in every cause respectively; if a rule be given for that purpose; which *Cheshire.*
Vacation pleadings when to be filed.

rule may be entered in the Prothonotary's office accordingly; else judgment shall be entered in the office for want of any such pleading as aforesaid. *Cbester, 9th Apr. 4 Ann.*

Vacation
pleadings to
be filed with
notice.

It is Ordered, That notice in writing of all appearances and rules, and filing of pleadings entered and filed in the vacation, &c. (See this rule at length under title *Appearance*.) *Cbester, 14th April, 1783.*

In assize
week one
rule to plead.

Memorandum, upon the report of Mr. Norbury and Mr. Whishaw of a conference had with the attornies about the rules to be given in the assize week, &c. &c. (See this rule under title *Declaration*). *Cbester, 29th March, 1733.*

In assize
week how
long to file.

Ordered, That in all causes where any plaintiff or defendant shall be called in open court, &c. (See this under title *Declaration*.) *Cbester, 11th April, 1783.*

Defendants
under stat. 6
Geo. II. c.
14, when to
plead.

Whereas by a statute made in the sixth year of the reign of his late Majesty King Geo. II. c. 14. § 1, &c. (See this under title *Appearance*.) *Cbester, 21st Apr. 10 Geo. III.*

Issue.

Upon the general issue tendered, the *similiter* *Similiter.*
to be entered without rule for the defendant ; but
on any special pleadings or *similiter* for the plain-
tiff, one rule to be given. *Denbigb, Flint, and*
Montgomery.

Resolved, On the New Rule after plea pleaded, *Similiter on*
and replication filed, concluding to the country, *new rule*
the defendant is not bound to join in *similiter*, till *how to be*
called upon by rule so to do : and after plea *joined.*
pleaded, the proceedings on the New Rule are the
same as upon the Old Rule ; nor can plaintiff force
the defendant to trial at that Great Session, unless
issue be completely joined in time for entering
the cause in the Marshall's book. *Foulkes v.*
Hughes. Mold, Apr. 16, 1789.

Ordered, That plaintiff in replevin (after the *Similiter*
cause was called on) have leave to withdraw a *added after*
demurrer to one of two issues, on payment of *cause called.*
costs ; and further leave to add the *similiter* in-
stead of it. *Salusbury v. Jones. Mold, Aug.*
28, 1792.

Demurrer. Upon demurrer tendered, one rule to join; and upon refusal, judgment to be given. *Denbigb, Flint, and Montgomery.*

Books of demurrers and special verdicts. Ordered, That for the future in all cases of demurrers and special verdicts, there shall be two books made for the judges; and that the attorney for the party demurring, and the attorney for the party where there is a special verdict found, shall take out both copies from the office, and pay for them; and that he shall deliver one of such copies to the Chief Justice, and the other copy to the attorney on the other side, who shall pay for it, and then deliver it to the other Judge. *Chester, 3d Sept. 14 Geo. II.*

§ 3.

Trial.

What Issues are triable at each Session.

Trials may be had on declarations ALL declarations that come in before the sitting of the first court of a Session shall be re-

ceived, and may go on to trial at that Session. *Denbigh, March. 2 Ja. II. Vide supra, p. 58.* filed before first court.

Ordered, That all declarations filed in the Session week in any actions brought and appeared unto in a former Session, shall be received as declarations of that Session in which they are filed ; and that such actions shall not be tried at that Session in which such declarations are filed. *Denb. 18 Car. II.* Not on declarations filed in session week though in old actions.

In all personal actions, after notice and service, affidavit and declaration under the New Rule, plaintiff shall be at liberty to proceed to trial, &c. at the said Great Session, &c. (See this rule under title *Appearance Process.*) *Mold, March. 8 Ann.* Trial of actions upon the new rule.

Ordered, That all writs of Certiorari returnable in this court (together with the record thereupon) be filed on or before the second court on the second day of the Session wherein such Certiorari is returnable ; and the defendant in such record shall try the same that Session. *Chester, 22d Apr. 3 Geo. I.* Cheshire. When issued on certiorari record triable.

Ordered, That no cause shall be brought on to trial by the plaintiff or plaintiffs therein at any What issues may be tried at each ses-

sion, and,
what not.

session or assizes wherein issue shall not be joined before the rising of *the second court* of such session or assizes (except actions of ejectment commenced on the New Rule; and such actions wherein the defendant or defendants is or are in gaol at or before the rising of the second court of such assizes; and also except actions where the damages are laid under £10, and the process therein served and appearance for the defendant entered pursuant to the stat. of 6 Geo. II. c. 14; and also except causes removed into this court by writ of error, certiorari, recordari, pone, or false judgment, such writ being returned and filed in the Prothonotary's office six days at least previous to the first day of such session or assizes), &c. &c. (See continuation of this rule under title *Notice of Trial, infra.*) *Cbester, 14 Apr. 1783.*

When de-
fendants in
custody may
go to trial.

Ordered, That no defendant who shall have been in custody upon mesne process, or surrendered in discharge of bail, *more than ten days* next preceding any session or assizes, shall compel the plaintiff or plaintiffs at whose suit or suits such defen-

How if in
custody
more than
ten days be-
fore session.

dant shall be so in custody, to proceed to trial at the next session or assizes; unless such defendant or his attorney shall give the plaintiff's

attorney or his agent in Chester notice in writing under his hand, of such his intention to call upon the plaintiff to proceed to try such cause at the then next assizes, eight days at least, inclusive of the day of delivery of such notice and of the first day of the assizes, by delivering such notice in manner aforesaid : And in case any defendant shall be committed upon mesne process *within ten days* How if within ten days. next preceding any session or assizes, the plaintiff in such action shall not be compelled to proceed to trial at the then next session or assizes ; unless such defendant or his attorney shall give notice in writing to the plaintiff's attorney or his agent in Chester, by delivering the same in manner aforesaid before the sitting of the first court of such assizes, that he intends to call upon the plaintiff to proceed and try the cause at such assizes, &c. &c. : And the plaintiff shall bring on the cause to be tried at the first assizes after the defendant shall be so committed, in case the defendant shall oblige him to join issue at or before the fifth court of such assizes ; but not otherwise, &c. &c. (See remainder of this rule under title *Appearance*.) *Chester, 14th Apr. 1783.*

Notice of Trial.

15 days notice if a session or more be intermitted after issue joined, and on failure after notice costs.

Ordered, That on an action after issue joined, if there be a session or more intermitted without any proceedings, there shall be 15 days notice given to the party or his attorney of the trial to be therein had before the session wherein the same is to be tried: and if after such notice given, the party who gives it does not go on that session, he shall pay costs to the other for his attendance. *Denb. Sept. 19 Car. II. March. 2 Ja. II. and Sept. 1 W. & M.*

15 days notice and declaration filed.

If plaintiff has not proceeded in second session he shall not go to trial, unless notice be given 15 days before the third session, and the declaration come in before the sitting of the first court in that session. *Mold. 2 W. & M.*

Cheshire.
On issues joined before 15 days preceding a session.

Ordered, That for the future in all causes commenced in this court, wherein *issue shall be joined on or before the 15th day* next preceding the first day of any session or assizes, notice of the plaintiff's intention of proceeding to try such issue at such then next ensuing session or assizes shall be

given in writing under the hand of the plaintiff's attorney or solicitor or his agent in Chester, by delivering the same to the defendant's attorney or solicitor or his known agent in Chester, or leaving the same at the dwelling house or office of such agent, attorney, or solicitor, *eight days* at least before such session or assizes, exclusive of the day whereon such notice shall be delivered and the first day of the assizes, otherwise such issue shall not be then tried: and in case such notice of trial shall be given, and the plaintiff or plaintiffs shall afterwards be desirous of countermanding the same, such countermand shall be given in writing under the hand of the plaintiff's attorney or solicitor or his agent in Chester, to the defendant's attorney or solicitor or his agent there in manner aforesaid, four days at least previous to such next session or assizes, exclusive of the day whereon such notice shall be delivered and the first day of the assizes; otherwise the plaintiff to be subject to costs for not proceeding to trial.

Chester, 14 Apr. 1783.

Eight days notice.

With four days countermand.

And in all causes wherein the issue shall be joined within 15 days next preceding the first day of any session or assizes, notice of the plaintiff's

On issues joined within 15 days.

intention to proceed to try such issue at the then next session or assizes shall be given in manner aforesaid on the day whereon such issue shall be joined, otherwise the same shall not be tried at such next ensuing assizes. *Cbester, 14th Apr. 1783.*

Notice upon
the day of
joining.

On issues
joined dur-
ing session
the like.

And in causes wherein issue shall be joined on the first day of any session or assizes, or before the rising of the second court, notice of trial thereof shall be given in manner aforesaid upon the day whereon such issue shall be joined; otherwise such cause shall not be brought to trial at that assizes: and such last mentioned issues not to be called on till the eighth court. *Cbester, 14th Apr. 1783.*

For not go-
ing on after
notice, costs.

And in case any such notice of trial as aforesaid shall be given, and the cause not brought on to trial pursuant thereto, the plaintiff or plaintiffs therein to be subject to costs. *Cbester, 14th Apr. 1783.*

On issues.
joined dur-
ing assizes.

No cause shall be brought on to trial by plaintiff or plaintiffs therein at any session or assizes, wherein issue shall not be joined before the rising

of the second court of such session or assizes, except, &c. (See this rule under title *Triable Issues*.) And in all causes wherein issue is joined in the course of an assizes, and which may be then tried pursuant to this rule, notice of the plaintiff's intention to try the same shall be given in manner aforesaid on the same day whereon such issue shall be joined. *Chester, 14th Apr. 1783.*

Notice on day of joining.

As to the notice necessary to be given by defendants in custody upon mesne process, &c. (See the rule at length under title *Triable Issues*.)

Notice by defendants in custody.

Entering Causes.

Ordered, That all causes at issue be entered in the Marshall's book, on or before the third day of the Great Sessions ; or otherwise the cause not to be tried that session, unless both parties do agree thereto. *Denbigh, Sept. 9 W. III.*

When to enter causes with the marshall.

The Marshall certified, the practice to be ; That causes may be entered before issue joined,

Causes not entered before issues joined.

and that it is customary so to do; But The Court on argument, Resolved this to be wrong; and Ordered, That none but causes at issue be entered. *Foulkes v. Hughes. Mold, April, 1789.*

Entering
causes nunc
pro tunc.

A cause at issue ought to have been entered on the evening of April 5th, but was not: at the morning court of April 6th, plaintiff obtained leave to enter the cause nunc pro tunc: and The Court refused to discharge that rule upon application at the same court by the defendant, except upon affidavit of his being less prepared to go to trial, for want of plaintiff's having entered in time. *Jones v. Jones, Apr. 6, 1791.*

Costs for
nor not try-
ing after en-
tering.

Where any action is entered in the Marshall's book, if the plaintiff do not proceed, defendant shall have his costs. *Denbigh, 4 Ann.*

Cbesbire.
When to en-
ter old and
new issues.

When to enter old issues and new issues in the Marshall's book. (See the rule under title *Habeas Corpora*,) *infra. Chester, 14th April, 1783.*

Costs for not
trying after
entering,

In case the plaintiff after his cause is entered with the Marshall shall not proceed to trial at the same

assizes, he shall be subject to the costs of that assizes. *Cbester, 14th Apr. 1783.*

All causes which shall be sent down by Mittimus from any of the courts at Westminster, shall be entered in the Marshall's paper, before the sitting of the afternoon's court of the second day of the Session in which such cause is intended to be tried; so that the court may proceed to trial that same day; the record being first filed with the Prothonotary. *Cbester, 31st March. 9 Geo. III.*

When to enter mittimus causes.

Proviso.

Where issue is joined, so that the plaintiff might have gone on to trial that Session, and he neglects it, the defendant may go on by Proviso; on motion at the last court of the first Session, or the first day of the next Session. *Mold. 2 W. & M.*

When defendant may go on by proviso.

Ordered, That the avowant after he has filed his avowry may upon motion proceed by Proviso, if the plaintiff do not proceed. *Denbigh, Apr. 10 W.*

When in replevin.

The like. Ordered, That if the avowant take out his venire, without moving for Proviso, the venire be laid aside. *Denbigh, Apr. 10 W.*

Venire.

When to be called in old issues. Ordered, That the Venire be called on Tuesday (*i. e.* second day of the Session) and none to be called after, except where issue is joined the same Session. *Denbigh, March. 2 Jac. II.*

When to teste the venire. Ordered, That in all causes wherein issue is joined in the vacation, the Venire shall be tested the last day of the preceding Session, returnable the first day of the next succeeding Session; and the habeas corpora tested the day of the return of the Venire, and returnable the day following. *Chester, 31st March. 9 Geo. III.*

Habeas Corpora.

When to be returned on old rule. Ordered, That in actions on the Old Rule, the Habeas Corpora may be returned into the office before the sitting of the court in the morning of the fourth day of the Session. *Mold, Sept. 8 Ann.*

And that in actions on the New Rule, the Habeas Corpora be returned before the sitting of the morning court on the fifth day of the Session ; or they are not to be received unless by consent.
Mold, Sept. 8 Ann.

When on new rule.

Same Rule ; and that after filing the Habeas Corpora if plaintiff do not proceed to trial, defendant shall have costs of attendance, to be taxed.
April. 11 Ann.

Plaintiff to go to trial.

Ordered, That if the plaintiff in all actions do not file the Habeas Corpora with the secondary, before the sitting of the first court the fourth day in the Session, the defendant shall be at liberty to enter a Ne Recipiatur. *Chester, 15th Sept. 13 W. III.*

Cheshire.
When to file the habeas corpora.

Ordered, That in all old issues, the Habeas Corpora be filed before the sitting of the court upon the fourth day ; and in all new issues before the sitting of the court upon the fifth day ; or such issues not to be tried that session ; and that the plaintiff shall be postponed only one court by an essoin. *Chester, 6th Aug. 15 Geo. II.*

On old issues and new issues, when.

The like.

In all old issues the Habeas Corpora shall be filed before the sitting of the morning's court of the third day; and in all new issues before the sitting of the morning's court of the fourth day; or such issues not to be tried that session. *Cbester, 31st March. 9 Geo. III.* .

On old issues, when to return the habeas corpora.

Ordered, That all issues joined fifteen days or more previous to any session or assizes, shall be considered as Old Issues; and be entered in the Marshall's paper of causes, upon or before the second day of such session or assizes; and the writs of Habeas Corpora therein to be returned to the Prothonotary before the sitting of the fourth court in the same sessions or assizes. *Cbester, 14th Apr. 1783.*

On new issues, when.

And that all causes wherein issue shall be joined within fifteen days next preceding the first day of any session or assizes, shall be entered in the Marshall's paper of causes upon or before the third day of such assizes; and the writs of Habeas Corpora therein to be returned to the Prothonotary, before the sitting of the sixth court of the same session or assizes; otherwise such issues not to be then tried. *Cbester, 14th Apr. 1783.*

View.

Ordered, That in future whenever a view is required for the trial of an issue transmitted from any other court to this court by mittimus, the rule for such view, if requisite, shall be made in this court, and not in the court from which the record is transmitted. *Chester, 15th Aug. 26 Geo. II.*

On issue
from any
other court.

Juries.

An account of the freeholders' book returned to the sheriff by the clerk of the peace for the county of Flint.

Hundreds names.	Justices of the Peace and persons fit to serve on Grand Jur.	Persons fit to serve on Petty Jur.	Total.	In each.	Number of Jurors for Flintshire.
Maylor	20	56	76	20	
Mold	18	57	75	20	
Ruthland	16	28	44	12	
Coleshill	2	16	18	5	
Prestatyn	6	3	9	3	

Ordered, That Maylor hundred do return 20, Mold hundred 20, Ruthland hundred 12, Coleshill 5, Prestatyn 3 freeholders, against every assizes, to serve upon Juries. 30 *March*. 4 *Geo. II.*

By virtue of a power contained in the statute of the third year of the reign of his late Majesty King George II. § 9th; It Is Ordered, That from henceforth the number of Jurymen to be summoned to serve on Juries at the respective Great Sessions for the said county of Flint do not exceed 52; which number shall be apportioned out of the several hundreds, in manner following; to wit;

Out of the hundred of Maylor 15 Jurymen.

Out of the hundred of Mold 15 Jurymen.

Out of the hundred of Coleshill 15 Jurymen.

Out of the hundred of Ruthland 5 Jurymen.

Out of the hundred of Prestatyn 2 Jurymen.

Aug. 5th, Geo. III.

Cheeshire.
Inhabitants
of Nantwich
not to be
returned on
Juries.

Ordered, That the sheriff do not return the inhabitants of Nantwich upon Juries in this court, they having ancient privileges and discharges for that purpose. *Chester, 10th Oct. 3 Jac. II.*

Ordered, That Special Juries for Chester be moved for in the other counties at the Judge's lodgings; in order to give sufficient time beforehand for summoning them. *Clayton d. E. Cholmondely v. Johnson and another. Rutbin, Spr. Sess. 1792.*

Special Juries.

Evidence.

Ordered, That no Affidavit be read in evidence, before it be filed in the office. *Denbigh. 16 Car. II.*

Affidavits to be filed.

Ordered, That every commissioner appointed to take Affidavits in the said court pursuant to the statute made in the 13th year of the reign of his present Majesty King Geo. III. intituled, "an act to discourage the commencing frivolous and vexatious suits in his Majesty's courts at Westminster, in causes of action arising within the dominion of Wales, and for further regulating the proceedings in the courts of Great Session in Wales," do, in the jurat to every Affidavit so taken, certify the place where such Affidavit was taken; and that no Affidavit taken contrary to this order shall be per-

Commissioners for affidavits to certify the place.

mitted to be read in evidence. *Aug. 16 Geo. III. and Aug. 20 Geo. III.*

Deeds. Ordered, That no Deed be received, which is not brought into the office a month before the Great Session. *Denbigb, March. 2 Jac. II.*

Confessing lease, entry, and ouster. Ordered, That when defendant confesses lease, entry, and ouster, by his attorney according to the usual rule, the attorney at the next Sessions must be bound to make good the rule, on pain of being struck off the roll: *Denbigb, 4 Jac. II.*

Special Verdict.

Books for the Judges. On Special Verdicts, there must be books made for the Judges (according to the rule cited under title *Issues*.) *Chester, 3d Sept. 4 Geo. II.*

New Trials.

Venire facias de novo, or distringas jur. If a verdict be set aside, then upon a New Trial, there goes out a venire facias de novo; but if a juror be withdrawn, then the plaintiff goes on by distringas jur. quia talis jur. fuit, &c. *Denbigb. 4 W. & M.*

§ 4.

Judgment.

How obtained.

IN all personal actions how to obtain Judgment after notice and service ; &c. (See the New Rule under title *Appearance Process*.) In personal actions on the new rule.

No Judgment to be given, upon bond for performance of covenants, awards, and agreements, upon default, without motion in court: no affidavit to be made. In actions on bond, &c.

In ejectment, how to obtain judgment (See the several Ejectment Rules under title *Appearance Process*.) In ejectment.

Ordered, That time be given to move for Judgment, &c. in ejectment till to-morrow morning, sitting the court. *Denbigh, 3 W. & M.* The like.

Ordered, That from and after the last day of the present Great Session no Judgment shall be Judgment by warrant of attorney

after third
Great Ses-
sions re-
quires leave
of court.

entered by virtue of a warrant of attorney, without leave of the court for that purpose first had and obtained, unless the same be entered before the first day of the third. Great Sessions that shall be held for the said county next after the execution of such warrant of attorney. *Wrexham, Aug. 30 Geo. II. for Chester, Flint, Denbigh, and Montgomery.*

Judgment
for want of
plea, though
not actually
signed.

If on time given for pleading till the ordinary day, no plea be then filed, it is the duty of the Prothonotary, or his deputy, ex officio to sign final Judgment without application by plaintiff; and the Marshall on the first day of the next Great Session also signs it; for the order itself is "Judic. Si," conditioned for defendant pleading at the day. *Pool, Aug. 1785.*

On scire fa-
cias against
bail.

Ordered, That no writ of scire facias shall issue against any bail, until the writ of capias ad satisfaciendum against the principal be returned by the sheriff and filed in this court; and that a writ of scire facias may issue on the day whereon the capias ad satisfaciendum is returnable, and be made returnable at the fourth court in the same session or assizes; and an alias scire facias issue, tested the day

of the return of the scire facias, and be made returnable at the last court of such session or assizes ; and in case only one writ of scire facias be sued out, tested on the first, and made returnable on the last day of any session or assizes, and the sheriff shall return the same scire feci, and the bail do not appear at the return thereof, or in case they do not appear upon the alias scire facias, returned nihil ; or do not surrender the defendant or defendants ; Judgment may be entered against the bail, at the last court of such session or assizes at which such scire facias or alias scire facias is returnable ; and execution go against such bail immediately after such session or assizes. *Chester, 14th Apr. 1783. N. B. At Pool August Sessions, 1791, On Motion it was Adjudged, that this rule extends to the three Welsh counties, according to the decision of April, 1789, and March, 1791.*

How set aside.

Ordered, That after a Judicium Si entered, no appearance shall be received ; unless the attorney for the defendant do first give notice to the plaintiff's attorney, and do plead to issue before the ordinary day ; and also that the defendant do pay

Judicium Si
on what
terms va-
cated.

to the plaintiff's attorney, or into the Prothonotary's hand for the plaintiff's use, the charges of the Judgment, before the Judgment be taken off or vacated. *Denbigb. 18 Car. II.*

The like as
to Judgment
by default.

No Judgment entered 'by default to be altered or taken off, but of the same Session ; unless the defendant plead in bar that Session without rule. *Denbigb, Flint, and Montgomery.*

How renewed.

Scire facias.

'As to the rule for proceeding upon a scire facias to renew or revive a judgment. (See the rule cited at length under title *Plea, &c.*) *Denbigb, Flint, and Montgomery.*

Costs.

Security for Costs.

Debt upon judgment in county court was removed by re. fa. lo. at suit of defendant ; the court refused, upon that ground, to compel plaintiff to give security for costs. *Stephens v. Powell. Pool, April 1st. 26 Geo. III.*

Ordered, That the plaintiff in ejectment living in the county do not find security to answer costs. *Denbigb, March. 1 Jac. II.* How to secure costs in ejectment.

Lessor in ejectment to find a sufficient lessee. *Denbigb. 2 W. & M. N. B.* The like at *Denbigb, 8 W. & M. and 2 Ann.*

Ordered, That the plaintiff and his lessor living out of the county do put in bail to answer the costs; or else not to proceed. *Denbigb, 8 W. & M. N. B.* The like was ruled at *Denbigb, 1 Ann.*

Ordered, That lessor ascertain who the plaintiff is. *Denbigb, 8 W. & M.*

Ordered, That all proceedings stay, till the lessor discover who is the plaintiff. *Denbigb, 8 W. & M.*

Ordered, That the defendant find security to answer the costs, and the mesne profits, if the verdict go for the plaintiff. *Mold, 2 W. & M.*

Ordered, That Humphry Owen be made a

defendant, and do defend the title, finding security for payment of costs. *Denbigh, 4 W. & M.*

How to secure costs in dower.

Ordered, That the defendant in dower (being a foreigner) find security to pay costs, or all proceedings to stay till performance. *Denbigh, 4 W. & M.*

How in debt.

Ordered, That the plaintiff in debt (being a foreigner) do give security to answer costs before he proceed to trial. *Denbigh, Mar. 11 W.*

How in trover.

Ordered, That security be given, though the cause be entered. *Flint, April, 1752.*

After plea pleaded, defendant moved that plaintiff might be compelled to give security for costs; plaintiff objected, that after plea this was too late; but The Court, in conformity to the practice of the King's Bench, Ordered it. *At Pool, and at Chester, Spr. Sess. 1792.*

Costs of Non Pros.

In ejectment.

The tenant in possession having appeared on Friday in the former Session, and plaintiff never

having filed any writ against him or the casual ejector, neither in the vacation nor session : Ordered, That no costs be paid by the plaintiff's lessor, except on account of the service ; and the lessor must serve the tenant de novo. *Denb. 2 W. & M.*

Ordered, That if plaintiff after service of declaration and notice does not proceed to file his declaration at the next Great Session, &c. defendant on motion may have his costs. *Wrexham, April 6th, 1789. Dod and Wright v. Dod.*

In all actions where plaintiffs are nonsuited for want of a declaration, the defendants shall have their costs ; being about *9s. 8d.* *Denbigh, Apr. 10 W.* In other actions.

Taxation.

Ordered, That, by the consent of the attornies, for every bill of costs referred to the Prothonotary by the court to be taxed, the Prothonotary before verdict do have *1 s.* for taxing the same ; after verdict *2 s.* : and the attorney for drawing, the like fees : and that all attornies do send in bills of costs to be filed in the office, when they take out executions: *Denbigh, 19 Car. II.* How costs are taxed.

Attachment for Non-payment of Costs.

Attachment
for non-pay-
ment of
costs.

In order to bring persons into contempt on a motion for an Attachment for non-payment of costs, the party applying must swear, that he has shewn the other party the original allocatur of the officer, or another allocatur signed by the officer for that purpose, which he makes out on application: the usage being to have two; one kept in the office, and one given out. *Hugbes v. Hugbes, Wrexham, Spr. Sess. 1790.*

§ 5.

Error.

Sureties in
error.

Ordered, That the plaintiffs in Error be bound with sureties, before they take any benefit of the writ. *Denbigb. 2 Jac. II.*

Ordered, That the plaintiff have no benefit of the writ until he find sureties, and the proceedings to stay upon the judgment a fortnight. *Denbigb, 2 Jac. II.*

Where bail is given below, bail ought to be

given in this court, or else the writ of error not to be received. *Denbigh, 3 W. & M.*

Upon the plaintiff's assigning of errors, there is but one rule for the defendant to plead in nullo est erratum. *Mold, 1 W. & M.*

When to plead in error.

The writ of error being abated, no costs to be paid by the plaintiff to the defendant. *Denbigh, March. 11 W. III.*

Abatement of the writ.

Ordered, That all writs of error for removing causes out of any inferior jurisdiction into this court, with the proceedings thereupon, shall (after the same have been allowed by one of the Judges) be filed with the Prothonotary, and special bail entered, in such causes where special bail is required in the court below, before the sitting of the second court of the first assizes next after the teste of such writ; otherwise the proceedings in the court below shall not be stayed, and a writ of procedendo may issue upon motion. *Chester, 14th Apr. 1783.*

In Cheshire. How to proceed upon writs of error.

Allowing the writ, filing it, and putting in bail to it.

And notice of such allowance and bail shall be given by the plaintiff in error or by his attorney,

Notice of allowance and of bail.

solicitor, or agent in Chester, to the defendant's attorney, solicitor, or agent there, by delivering the same in manner aforesaid before the sitting of such second court. *Chester, 14th Apr. 1783.*

Bail allowed. And in case the bail be not excepted to before the sitting of third court, such bail shall be allowed, and the plaintiff in error shall assign errors before the rising of such third court. *Chester, 14th Apr. 1783.*

Or excepted to. But in case such bail be excepted to and disallowed, the plaintiff in error shall add and justify sufficient bail before the rising of the fourth court of the same assizes; otherwise a procedendo may issue. *Chester, 14th Apr. 1783.*

Assignment of errors and plea. And in case such bail be deemed sufficient, and assignment of errors be filed, and the defendant or defendants shall plead before the rising of the fifth court of such assizes, and after plea of in nullo est erratum filed, the plaintiff in error shall join in error before the sitting of the sixth court of such assizes, either party may move at that court for a concilium, and set down the cause for judgment of the court; otherwise such errors

not to be argued at that assizes without leave of the court upon motion. *Cbester, 14th Apr. 1783.*

And if the errors be not argued during the course of the assizes at which the writ of error is filed, and the plaintiff in error intends to argue the same at the next subsequent session or assizes, the plaintiff's attorney, or his agent in Chester, shall give ten days notice in writing of arguing. Notice of arguing. the same (exclusive of the day of service and the first day of the assizes) to the Prothonotary, and also to the defendant's attorney, or his agent in Chester, before such session or assizes at which the same are intended to be argued, such notice to be delivered to or left for the Prothonotary, and defendant's attorney or his agent, in manner aforesaid. *Cbester, 14th Apr. 1783.*

And the attorney for the plaintiff in error, or his agent, shall take out two copies of the Error-Book from the office, and pay for the same, and deliver one of them to the Chief Justice, and the other to the attorney for the defendant or his agent, who shall pay for the same and deliver it to the other Judge. *Cbester, 14th Apr. 1783.*

§ 6.

Execution.

Verifications
on the New
Rule.

Ordered, That verifications upon the New Rule be filed immediately after each Great Session if required, and executions do issue. *Apr. 10 Geo. III.*

Verification
by oath of
executor or
administra-
tor.

An executor or administrator to make oath that he received no part of the debt, nor any other, since the death of the testator, nor the testator himself to his knowledge. *Denb. Flint, and Montgomery.*

In Chesbire.
When exe-
cution issues
against bail.

When execution may issue upon scire facias against bail. (See the rule under title *Judgment* *how obtained, supra.*) *Cbester, 14th Apr. 1783.*

Writs of in-
quiry how
executed.

Ordered, That upon the execution of all writs of inquiry of damages issuing out of this court, and executed in the vacation, in causes wherein judgment shall be obtained, more than ten days previous to any session or assizes, *eight days notice* at least of executing the same shall be given under the hand of the plaintiff's attorney or soli-

In vacation.

citor, or his agent in Chester, to the defendant or defendants, or his, her, or their attorney or solicitor, or to the agent of such attorney or solicitor in Chester, or left at the usual place of abode or office of such defendant or defendants attorney, solicitor, or agent, before the day on which such writ of inquiry shall be executed, *Chester, 14th Apr. 1783.*

And as to writs of inquiry, intended to be executed in the course of the same assizes wherein judgment shall be obtained, or within ten days next preceding the assizes wherein the same are intended to be executed, *notice* of the execution thereof shall be given under the hand of the plaintiff's attorney or solicitor, or his agent in Chester, in manner aforesaid, to the defendant, or his attorney or solicitor, or to the agent of such attorney or solicitor, at least the *day before* the same shall be executed. *Chester, 14th Apr. 1783.*

In assize time.

And that writs of inquiry may be executed on the last day of any assizes as heretofore. *Chester, 14th Apr. 1783.*

IV.

PROCEEDINGS IN EQUITY.

SUMMARY PROCEEDINGS.§ 1. *Guardians.*§ 2. *Infant Trustees and Mortgagees.*

PROCEEDINGS BY BILL.

§ 1. *Pleadings.*§ 2. *Hearing.*§ 3. *Judgment.*§ 4. *Execution.*

SUMMARY PROCEEDINGS.

§ 1.

Guardians.

THE Court resolved, That a guardian may be appointed of the person and property of an infant by the Justices of Great Sessions, without suit, on motion and affidavit of circumstances, as to the

age and the property of the infant, and the condition in life of the guardian proposed : And the appointment of such a guardian was Ordered accordingly, per *Bearcroft, C. J.* and *Burton, J.* : after application made to them at a former Great Sessions, and an intermediate conference by them had with the other Welsh Judges in London. *In m̄re. of Roberts, Wrexham, Aug. 16th, 1790.*

§ 2.

Infant Trustees and Mortgagees.

THESE may, on petition or motion, be ordered by the Court of Great Sessions to convey and assure the lands, tenements, and hereditaments which they have in trust, or by way of mortgage. *Stat. 7 Ann. c. 19. extended to Wales, &c. by stat. G. III. c. 16.*

PROCEEDINGS BY BILL.

§ 1.

Pleadings.

Counsel to
sign plead-
ings and
make mo-
tions.

ALL motions are to be made by Counsel only :
and all bills, answers, pleas, demurrers, special re-
plications, special rejoinders, and all exceptions are
to be signed by Counsel.

Attornies to
sign plead-
ings.

All pleadings whatsoever are to be signed by
the respective Attornies, or else not to be received
by the register.

Entries re-
cente curia.

If a bill, or any other proceeding, or appear-
ance, be entered or filed whilst the court is sit-
ting, it is deemed as entered or filed after the
court : so that no motion can be made for want
of an answer or other proceeding till after the
fourth court following.

Bill.

First the complainant must file his bill.

Any person may file a bill as next friend to an *By infant.* infant ; but if, on hearing the cause, it appears frivolous or vexatious, the Court will order the next friend to pay costs : and if the next friend dies, there must be a bill of revivor filed before the infant can proceed.

A wife, by her next friend, may sue her husband. *By feme covert.*

When a pauper is admitted to sue in formâ *By pauper.* pauperis, he must prefer a petition to the Judges, setting forth his cause of suit, having the same signed by Counsel, alleging that the petitioner has good cause of complaint ; upon which, and the petitioner's affidavit that he is not worth £5. in the world, the Judges will order him to be admitted, and assign him Counsel and Attorney. *Nuttal v. Foulkes, 1st April, 1737.*

When a bill is filed for discovery of writings, *Bill of discovery with affidavit.* the plaintiff must make affidavit annexed to his bill that the same are not in his hands ; and that

he believes them to be in the defendant's custody, and for want of such affidavit a demurrer will be good.

Bill to perpetuate with affidavit.

When a commission to examine witnesses *de bene esse* to perpetuate testimony is prayed by bill, the person who files the bill, or some person on his behalf, must make affidavit that the witnesses are aged and infirm.

Injunction bill.

If the bill be for an injunction, plaintiff may take out his subpoena before the bill filed, and has three courts after the defendant's appearance to file the same.

On certificate under counsel's hand, that he is preparing an injunction bill, the Registrar will issue a subpoena immediately. *Jarman v. Jarman*, Pool, Aug. 10, 1790; and *Jones v. Jones*, Wrexham, Aug. 16, 1790.

Motion, for injunction to stay proceedings at law, on filing a bill; and denied, till defendant is in contempt, or prays a *dedimus*; for injunction on filing a bill is only to stay waste.

An injunction shall not be granted, unless plaintiff gives notice of motion to the defendant. Injunction not granted without notice of motion.

No injunction to be made out for any thing else but to stay proceedings at law, without special order of court. Injunction by special order of court,

When a bill is filed for an injunction, on affidavit made, the Court will order that service on the plaintiff at law's attorney shall be good service, if the defendant in equity (who is plaintiff at law) lives out of the jurisdiction. *Pool, 1724, Sept. Sess. Wynne v. Wynne.* Injunction against a party out of jurisdiction.

If a man recovers at law, and the defendant hath equity whereon to be relieved, and cannot serve the plaintiff by reason that he is out of the jurisdiction, the Court in this case will stop the execution till the plaintiff in the action at law appears and answers the bill in equity.

An injunction on a dedimus stops judgment and execution, but does not stop trial. Effect of injunction.

No person shall be in contempt for breach of an injunction till sealed and served : and the order Breach of injunction.

for an injunction stands for nought till the injunction be made out.

**Abatement
and revivor.**

If a feme sole plaintiff marries, the suit abates, and her husband if he would proceed must file a bill of revivor : but if a feme sole defendant marries, she shall not take advantage of her own act to plaintiff's prejudice ; and plaintiff need not even amend.

Motion to amend bill, by making an husband party who had married a plaintiff feme sole, defendant's counsel consenting ; but the Court said, it could not be done ; and Ordered a bill of revivor to be brought. 1723.

**Revivor on
motion.**

Upon a bill of revivor filed, and time for answering being out, and motion made that proceedings may stand revived, the cause stands to every purpose as before the party's death.

**Order made
in an abated
cause.**

Writings were brought into court ; plaintiff died, defendant moved to have the writings out of court ; the Court doubted whether they could make any order ; the cause being abated : but at last, Ordered ; Unless the cause was revived in three

days, defendant should have the writings out of Court.

A plaintiff may revive a cause against an heir and an executor or administrator; but against a devisee, he must file a supplemental bill.

If plaintiff obtains an order to amend his bill, on payment of costs and amending defendant's copy, and also requires a further answer, he must pay 10s. and serve the defendant with fresh process.

On a motion to amend bill without costs, and amending defendant's copy (which is a motion of course) you cannot strike out any of the plaintiff's names; but in that case it is a special motion, and ought to mention the names of the plaintiff's you would strike out.

If a cause has lain dead for two or more Sessions, the Court will on motion grant a subpoena to make an attorney, and the plaintiff must serve the defendant with this new subpoena ad faciend, attornat.

Appearance Process.

**Subpœna
when re-
turnable.**

Plaintiff after filing his bill must take out his subpœna to answer ; returnable, if sued out before the sessions, the first or some other day certain of the next sessions : if sued out in sessions-time, it is made returnable immediately, in the county where the defendant is resident or his estate lies.

**How many
defendants
in each.**

In a subpœna there can be but three defendants ; husband and wife go but for one.

**One sub-
pœna to two
bills.**

If plaintiff files two bills, and takes out but one subpœna, the defendant must appear to both bills.

How served.

If the defendant be served with a copy of subpœna, it must be served in person, and by shewing him the subpœna under seal : but if he cannot be served in person, it is a good service to leave the subpœna under seal at his last and most usual place of abode : and all subpœnas are to be served by persons that can write and read.

The defendant has three whole courts after service of subpoena to appear. Time to appear,

The defendant must be served with the subpoena so as he may have three courts after the service to appear in the county where it is returnable; or else he is not obliged to appear till the next Great Sessions for that county: and if he be prosecuted to a contempt for not appearing, he will, on making the truth appear to the Court, be discharged. And in what county.

If he does not appear the fourth court after service, plaintiff, upon affidavit of service of the subpoena and a certificate from the Registrar that the bill is filed and no appearance entered, will upon motion of Counsel have an attachment against the defendant for want of an appearance. Attachment.

And if the defendant do not appear and clear his contempt before the fourth court after the motion for an attachment, then upon reading the return of the attachment, if the defendant be not taken, and upon motion of Counsel, an alias attachment with proclamations will be awarded against the defendant. Alias attachment.

Commission of rebellion and sequestration. And afterwards in like manner of proceeding a commission of rebellion, and then a sequestration, to compel defendant to appear.

Infants to appear. If the defendant be an infant he must appear, or may be taken up for contempt.

Husband and wife appearing. If a subpoena issue against husband and wife, and they are served, and the husband alone appears, an attachment shall issue against both; for the husband ought to appear for himself and wife; or else shew the Court that his wife and he are parted.

Process issuing, in what county. Attachments and commissions of rebellion are grantable in any county; but first process, the process to hear judgment, and the sequestration are granted only in the county where the cause originally began: and after a sequestration returned, the Court on motion will grant a process to the Sheriff to set and let, which said process need not be granted in the proper county, it being but part of the sequestration.

Answer, &c.

After the defendant has appeared, he must file his answer before the sitting of the fourth court ;

Time to answer.

Or, by Counsel, move for further time to put it in ; or for a dedimus to take his answer, which is seldom granted, but so as to have an answer before the end of the circuit ; unless it happens towards the close thereof, and then not without good cause, shewn by affidavit or otherwise, that the defendant cannot answer that circuit.

Motion for further time, or dedimus.

If in sessions time the defendant takes out a dedimus to answer returnable immediately, he must execute the dedimus, and bring in the answer, within three courts after the order.

Dedimus returnable immediately.

If the defendant takes out a dedimus to answer at any certain day, the plaintiff shall not have an attachment against the defendant for want of answer, till the fourth court after the day of the return of the dedimus : and therefore The Court never suffers a dedimus to be granted without ground, and usually to be returned in the next county upon

Returnable at a certain day.

the same circuit, and not to be put off till the next circuit.

How to proceed on a refusal to sue it out after it is granted.

But if the defendant does refuse to sue out his dedimus after the court has granted it, then he ought to be prosecuted in the county where the dedimus was ordered to be returned, as though no dedimus had been granted.

Enlarging the time for answering.

The Court will frequently enlarge the time to a court or two longer for defendant to answer, upon reason shewn, that the bill is long, or any thing else that may hinder answering in precise time.

Process to compel answer.

In default of answer, on further time granted, upon reading the Registrar's certificate of the bill's being filed, appearance entered, and no answer put in, an attachment will be granted on motion by Counsel against defendant for want of answer; and such further process be granted to compel the defendant to answer, as to force an appearance.

Against prisoners the bill taken pro confesso.

If the defendant be in gaol, and will not answer the plaintiff's bill, then he is to be brought up three several times, and each time the plain-

tiff's bill is to be read to him; and if he will not answer, the bill is to be taken pro confesso.

If the defendant be an infant, he must appear, or may be taken up for contempt; and he must answer by guardian, assigned him in court, or assigned by special commission obtained on motion. Infants answering.

No infant to have guardian assigned him in equity before a suit depending. *Pool, March, 1723. Contra, vide supra, p. 94.*

A wife cannot answer without her husband, unless by an order of court. FemeCovert answering.

But if the wife be adult, and the husband be an infant; it is said, they shall answer separately, viz. the infant husband by his guardian, and the wife by her's. Husband and wife answering separately.

Defendant's husband being out of the county, The Court Ordered that she should put in her answer by guardian, which she did. *Knipe v. Campbell.*

If the bill be for an injunction, and not filed Answering

injunction bill. till after defendant has appeared, he has from the filing of the bill till the fourth court to answer.

Answering cross bill. A defendant to a cross bill is not obliged to answer, till the party has answered the original bill; and every answer must be filed before publication in the original cause.

Answering amended bills. If bill be amended after appearance, and before answer; thereupon, defendant has three more courts to answer; the amended bill being a new bill for this purpose. *Williams v. Alborne. Mold, Apr. 5, 1792.*

Signing answers by counsel of the Circuit. Motion, that an answer signed by a foreign Counsel might be taken off the file: but the answer being taken by commission, and defendant living in Staffordshire; The Court refused; requiring nevertheless that such an answer should be also signed by some Counsel attending the Circuit, over whom the court has power in case of scandal, &c. in the answer.

Returning answers taken by commission. An answer taken by dedimus, ought to be brought into the office by one of the commissioners

who took the answer; or else the party bringing it ought to swear it has not been opened or altered since he received it, and that he received it from one of the commissioners.

An answer is not regularly filed, till the contempt, if any, are cleared.

When answer is filed.

Defendants having admitted by their answer that they were possessed of certain deeds, in which plaintiff had a common interest, were ordered on motion and reading of the answer, to produce the same upon oath: it was insisted that the defendants should also deliver them to their clerk in Court with a schedule; but, the defendant not having been required by the bill so to do, nor having submitted so to do by their answer, The Court refused to compel it. *Williams v. Griffiths and Wife. Pool, Aug. 14. 1792.*

Deeds admitted by defendant's answer, how to be produced.

Upon plea or demurrer filed, if the plaintiff does not allow it, then the defendant at the fourth court must move to set down his plea, or demurrer, to be argued; or in default thereof it is to stand over-ruled; unless the court give a further time for arguing thereof:

Plea or demurrer;

argued;

allowed; Defendant demurred to a bill; the demurrer on arguing was allowed; then plaintiff amended his bill; in this case he ought to serve the defendant afresh with process:

Over-ruled,
with liberty
to amend
and except.

Defendant pleaded to plaintiff's bill; and on arguing the plea, The Court Ordered, that the plea should stand for an answer, with liberty to except, and the defendant to have the benefit of the matters pleaded at the hearing: then plaintiff filed exceptions, and as soon as the exceptions were filed, moved to amend without costs, which was ordered: for, as defendant was to answer the exceptions, it would be no further expence to answer the amended bill and exceptions at once. *Lloyd v. Davies.*

Time for
plaintiff to
allow, ex-
cept, or
reply.

After the defendant has fully answered, pleaded, or demurred, the plaintiff has till the fourth court, to except or reply to the answer or plea, or allow the demurrer; and in default thereof, or of procuring further time so to do before the fourth court, then upon motion of Counsel, and reading the Registrar's certificate thereof that the plaintiff has not excepted or replied, the plaintiff's bill is to stand dismissed with costs to be taxed by the Registrar.

If the plaintiff take exceptions to the defendant's answer, then the defendant has to the fourth court afterwards to answer over; which if he does not, the plaintiff upon a certificate that the time of answering over is out, must move by Counsel to refer the exceptions to one of the Gentlemen at the Bar, to report to the Court whether the exceptions be sufficient or not; which report, on Counsel's motion, is to be filed with the Registrar. Exceptions referred.

Upon a debate about referring exceptions to the Junior Counsel, The Court Ordered, That the Junior Counsel should take the references by turns on the circuit; and that the last Junior should not have all the references. *Aug. 1730.*

If the exceptions be held good, then the defendant must answer over before the fourth court, and pay 20s. costs; or else he may be prosecuted for contempts, as if no answer was put in. Further answer.

The defendant has three whole courts to put in his further answer, as he has to put in his first.

If a second answer is insufficient, it must be referred on the same exceptions: but if the plain- Second reference.

tiff amends his bill, then he may file a second set of exceptions for not answering the amendments ; and the second answer ought to be referred back to the same Counsel.

Answering
in vinculis.

The defendant put in three insufficient answers, for which he would pay only common costs on each answer ; whereon plaintiff moved The Court for greater costs ; and The Registrar informing The Court that by the practice the costs were only 6s. 8d. on each, The Court would allow no more to plaintiff, though £6. out of pocket : and The Chief Justice said, The Court punished the defendant by making him answer in vinculis, rather than in his pocket.

Report upon
exceptions.

If no exceptions be taken to the report of Counsel before the fourth court after the filing thereof, the same (by motion upon a certificate that no exceptions are filed) is to stand confirmed.

If exceptions are filed to the report, then the party excepting must set them down to be argued before the fourth court following : otherwise the exception will (upon motion and certificate that

they are not set down to be argued) be over-ruled, and the report stand confirmed.

Replication.

If there be more than one defendant in a bill; and one defendant answers, and the rest stand in contempt, the plaintiff shall not be compelled to reply till all the defendants have answered, and then he has till fourth court.

Plaintiff
when to
reply.

If a bill is filed for several matters, and after coming in of the answer, plaintiff thinks some of the matters are against him, then he may reply specially, and thereby abridge his demands, and give up those things he thinks are against him, and proceed only for the rest. *N. B.* Special replications are obsolete in all courts of equity, and the same purpose is answered by amending the bill.

Special re-
plications.

If a plaintiff has nothing to prove, and yet will not admit defendant's answer to be true, then he must reply, and strike commissioners names, and give defendant notice to take out a commission; and if defendant neglects to take it out and execute it, plaintiff may next circuit move for publi-

Replying
without
proof.

ction, though no witness be examined : for where there is a replication there must be a publication, though no witness be examined.

Replying
after cause
set down.

If a cause is set down for hearing on bill and answer, and afterwards plaintiff finds it necessary to prove some facts, on motion The Court will give leave to reply and take out a commission.

§ 2.

Hearing.

Examination of Witnesses.

Examina-
tion before
the Regis-
trar ;

of witnesses ;

THE parties may at any time before publica-
tion, examine their witnesses at the office before
the Registrar : a note of the witnesses names
ought to be left with the Solicitor on the other
side.

of parties ;

If a defendant will disclaim, you may examine
him.

A party to a suit cannot be examined without an order of court for that purpose.

If a defendant is to be examined upon interrogatories before the Registrar, he may take a copy of the interrogatories, and get his depositions drawn by Counsel; for it is in nature of another answer.

If either party shall crave leave to examine witnesses in the office, whereby publication cannot pass so as to hear the cause in the proper county that circuit; in such case The Court will seldom allow them that favour, unless they consent to hear the cause in one of the other counties that circuit, which otherwise cannot be; all causes being to be heard in the proper county where they began. Under terms.

When the parties are at issue, the plaintiff of course may sue out a commission for examination of both parties witnesses, (returnable the first day of the next Great Session for the county where the cause originally began) at which commission, the commissioners and clerks being legally sworn, both parties if possible must examine Examination by commission.

all their witnesses ; otherwise there will be no new commission granted to either party without good cause shewn by affidavit.

Who commissioners.

Commissioners to examine witnesses ought to be indifferent, and no Solicitor or Agent ought to stand a commissioner.

What notice.

Fourteen days notice is to be given for executing the commission.

Countermand.

If notice of executing a commission is given, and not countermanded, and the party does not proceed to execute the commission, the other side shall have costs for want of proceeding.

Interrogatory added.

Before the commission comes in, leave may be had upon motion to file an additional interrogatory to examine into the credit of a witness.

How to compel attendance of witnesses.

When a commission to examine is sued, either party may have a subpœna for his witnesses ; and on serving them therewith, and on giving them notice where to attend the commissioners, if they refuse, The Court will grant an attachment. The usual way is to get a warrant or summons from

the commissioners, and if a witness refuses to attend the commissioners (being tendered his charges), it is said The Court will grant a subpoena, and compel such person to attend at the Registrar's office at his own expence.

The commission ought not to be executed at the house of either party. Where to execute commissions.

The two Solicitors agreed that the defendant should have a duplicate commission; and, defendant having notice, first the commissioners met at different houses and refused to join each other, and examined *ex parte* each; and on motion The Court thought it irregular for the defendant to have a duplicate without motion and order; and the depositions on both sides were suppressed; the plaintiff executed his commission at his own house, which The Court thought a misdemeanor; and, had defendant's commissioners gone there and desired an adjournment, and plaintiff's commissioners had refused them, The Chief Justice said, it would have been a good cause for defendant to have executed his commission.

If either party refuses to join in commission, Commis-

sions ex
parte.

and strike commissioners names, The Court on a motion will grant a commission ex parte.

New com-
mission; For
plaintiff;

If plaintiff neglects to execute the first commission, he cannot have another (unless defendant consents) without an order of Court.

For defen-
dant.

If a defendant moves for a new commission, and The Court orders that the plaintiff shall have the carriage and the defendant a duplicate, the defendant sues out and prays for both.

Commis-
sions de
bene esse.

If a plaintiff files a bill, and has ancient witnesses, who he thinks will not live till the answer comes in, then he may on affidavit of the age and infirmity of his witnesses, obtain an order for a commission to examine them de bene esse: and then if any of the witnesses die before the parties go to commission, the depositions taken de bene esse may be read in evidence.

A defendant after he has answered may obtain a commission to examine his witnesses de bene esse, if plaintiff neglects to reply and go to commission.

If a commission be issued out and executed, and the commissioners neglect to return the same by the end of the third court after the return, then The Court will on motion grant a certiorari against the commissioners, requiring them to return the same; and on their refusal to obey them, upon oath made, The Court will grant an attachment.

Return of
commission.

Publication of Depositions.

When the commission for examination of witnesses is returned into the Registrar's office, (the depositions being written in a fair and legible hand on treble-penny) either party on a certificate thereof may by Counsel move for publication, unless good cause shewn to the contrary at the next court; and if cause be not shewn publication passes without further notice.

When to
pass publi-
cation.

A motion to quash depositions for any irregularity committed by the commissioners in taking them, must be before publication passed; but after publication, either party may move to quash them for scandalous matters contained in them; for before that time, it cannot be supposed to have come to their knowledge.

Quashing
depositions
for irregu-
larity or
scandal.

Day in Court.

Setting
down cause
for hearing.

After publication is past, the plaintiff must the same circuit set down his cause to be heard, which must be in the county where it began; otherwise, the defendant the next circuit after publication may by his Counsel move to set it down ad requisitionem defendentis.

Ad requisitionem defendentis.

Mr. Cowper moved to set down the cause ad requisitionem defendentis; and it appearing that publication passed last circuit at Wrexham, and it being a Montgomeryshire cause, The Court thought the plaintiff could not set down his cause before this circuit; and that until he had let a circuit slip, defendant could not be permitted to set it down. *Colly v. Wilson, Sept. 1727.*

If a cause be ordered to be heard, either party may set it down, and move The Court for a day to be assigned for hearing it.

Subpœna
to hear
judgment.

If the cause be set down to be heard the next circuit after issue joined, the defendant is obliged to appear gratis to hear judgment without service

of a subpœna : but if one circuit escapes between the joining issue and the hearing, the party that brings the cause to hearing must serve the other with a subpœna to hear judgment ; which subpœna is granted on certificate that the same is set down, and must be returnable three courts in the proper county.

Upon affidavit that defendant secreted him- How served.
self to avoid being served with a subpœna to hear judgment, it was Ordered, That service on defendant's clerk in court, and affixing a copy of subpœna on the door of defendant's dwelling-house, should be deemed good service. *Roberts and another v. Lloyd and another, Aug. 1734.*

All process to hear judgment ought to be re- Process re-
turnable in the proper county where the suit be- turnable in
gan, and the cause ought not to be heard in proper
a foreign county, without the special order of county.
court.

If a motion be made to prove exhibits at the Of proving
hearing vivâ voce, the several exhibits must be exhibits at
named in the rule. the hearing.

A will cannot be proved at the hearing.

A will cannot be proved *vivâ voce* at an hearing as an exhibit, because the other side cannot cross-examine as to the sanity of the testator, or as to the presence of all the three witnesses.

Entering evidence by the Registrar.

On a hearing, the Registrar ought to enter the depositions which are read, and the exhibits, on which the decree is founded; for upon Appeal to the House of Lords nothing can be read there which has not been read in the Court below.

§ 3.

Judgment.

Dismissal.

In case the parties make default at the hearing.

If a cause comes on to be heard, and the plaintiff makes default, then on reading an affidavit of service of the subpoena ad audiendum judicium, the bill is dismissed without opening or reading: but if defendant makes default, plaintiff must open and read part of the answer; because he prays a decree.

Motion was made to dismiss after replication filed for want of taking out a commission, but it was denied, and the defendants were directed by the Court to set down the cause to be heard. *Verney C. J.* said that defendant could not dismiss after replication filed without an affidavit: but that after issue is joined defendant might bring on the cause, and perhaps plaintiff had nothing to prove. *Apr. Sess. 1735.*

Dismissal
after repli-
cation.

N. B. Willes, C. J. and *Kenrick, J.* often gave leave to dismiss after replication: And the same rule was agreed to by *Skinner, C. J.*

But if a commission be once executed, the defendant cannot dismiss on motion, but must set down the cause ad requisitionem defendantis.

No dismissal
by defen-
dant after
commission
executed.

After plaintiff has slipt his time for arguing a demurrer, or excepting or replying to the answer, then upon motion of Counsel and reading Registrar's certificate thereof, the plaintiff's bill is to stand dismissed, with costs to be taxed by the Registrar.

Dismissal
for want of
proceeding
after answer.

If a bill be filed against several defendants, and

For want of

proceeding
to compel
answer.

some of them answer, and plaintiffs neglect to prosecute the rest for not answering, then those defendants who have answered may dismiss the bill for want of proceeding.

Where there are several defendants, plaintiff may dismiss his bill as to one, for which he pays 10s. costs.

Decree of Relief.

Decree of
account be-
fore the
Registrar.

If upon hearing, the Court shall decree an account to be taken by the Registrar, and he makes his report, the proceedings in such case as to the filing and excepting to the report are the same as the proceedings on the report of the sufficiency or insufficiency of an answer.

Interroga-
tories for
examining
parties be-
fore the
Registrar.

Upon settling interrogatories for examining parties to pass their accounts before the Registrar, each side is to file its interrogatories with the Registrar, and to take out three warrants for the other side to be present at settling them, else on the third warrant the Registrar proceeds *ex parte*. *Kenyon v. Sutton and others. Mold, Aug. 1789.*

If a special report be made, or exceptions be put in to a report, when it comes on in court, the Counsel for the plaintiff, or he who excepts, opens the cause ; and then the report is read ; and from what appears in the bill, answer, and depositions, an order is made.

Special report, or exceptions to report.

If a matter comes on to be argued on the Registrar's special report the Court will not read proofs, or any thing foreign to the report ; for if the Registrar does not state facts right, the other party ought to have excepted to his report.

Arguing report.

The Registrar's report must be filed and confirmed by motion of Counsel.

Confirming report.

The first motion is to file the report, and the act of filing it is putting it on stamps. The second motion is to confirm it, which may be absolute in the first instance by consent of all parties ; else three courts must intervene after it is filed before it can be confirmed. The third motion is, that the cause may be set down for further directions. *Per Morgan, Regr. Kenyon v. Sutton and others. Mold, Apr. 6, 1790.*

How to proceed upon a report.

Arguing exceptions. Leave given, on payment of costs, to set down exceptions to be argued after five courts ; and the person that excepts must set down the same to be argued. *Roberts v. Roberts, Apr. 1739.*

Ex parte report. Motion that the Registrar might proceed to take the account ex parte ; the Court refused ; but made an order for the Registrar to speed his report, and then if either side did not proceed the Registrar might make his report ex parte.

Accounts taken in vacation. Ordered, That the Registrar shall proceed to take accounts in the vacation. *By Noel, C. J. and Talbot, J. Apr. 1753.* N. B. Doubts being entertained whether this rule extended beyond the first vacation subsequent to the decree, *Morgan, Regr.* desired to have a commission for that purpose ; accordingly the following rule was drawn up by consent ;

“ That a commission do issue in this cause empowering the Registrar to proceed in the ensuing vacation to take the accounts and prepare his report, as directed by the decree made in this cause ; and that upon the requisition of any of the parties to be signified in writing to the Registrar, he shall

fix a time and place for all parties interested to proceed before him to take the said accounts; and that the parties do thereupon proceed accordingly on the said account de die in diem." *Kenyon v. Sutton and others. Mold, Apr. 15, 1789.*

A bill against an infant to foreclose, the Court decreed an account; although defendant cannot absolutely be foreclosed till after he is of age. Foreclosure of infants.

Motion to refer an account to arbitration, defendant being committee of a lunatic, and Counsel offering to consent; but the Court held, that the Counsel could not consent for defendant, neither could a cause be referred, wherein a lunatic or infant is concerned. No arbitration for infants or lunatics. *Sept. 1726.*

Motion to refer all matters in difference after the decree, which the Court refused; but said, that both parties might enter into bonds. Nor after decree. *Davie v. Griffith. Pool, March, 1726.*

In drawing up a decree, the Registrar may add "that parties may be examined on interrogatories," for clearing the account; although not so taken down in the minutes. Decree varied from minutes.

Rehearing. No rehearing is allowed unless the petition be preferred the next sessions, and two Counsels hands to the petition, and £5. deposited with the Registrar.

A petition for a rehearing was rejected for being preferred out of time. *Powel v. Powel*, Aug. 1730.

Costs.

None given unless mentioned. If no costs are mentioned in the decretal order, it is understood that the Court allows none.

The Registrar neglected to take any minute at the hearing, to reserve the costs; and a motion being made to add, "costs reserved till coming in of the Registrar's report;" the Court said it could not be done; but that the cause must be set down to be heard as to costs; and that if the costs were not reserved at the first hearing, the Court would not award costs at the second on the equity reserved: but afterwards both sides agreed to amend. This motion was made the circuit after the hearing.

Where a bill is for discovery only, defendant is of course intitled to his costs. *Per Willes, C. J.* Costs, on a bill of discovery for defendant.

If exceptions are filed to the Registrar's report, and on hearing the exceptions they are allowed, no costs are to be paid, it being the fault of the Officer : but if over-ruled, then the party excepting must pay costs. On exceptions to report.

If plaintiff or defendant dismiss the bill, plaintiff shall pay full costs to be taxed. On dismissal.

If there be a decree " unless cause to the contrary," the person for whom it is given shall have the costs of the hearing ; though the cause go against him afterwards ; because it is through the parties default that the decree nisi was given. On decree nisi.

But upon a rehearing the costs must attend the event of the suit, because it is through the party's default that the judgment nisi was given. On rehearing.

Costs are not deposited in any case unless upon a rehearing. Depositing costs.

Costs on a
decree ex
parte.

Where a decree is made ex parte, the costs are increased or diminished at last.

Executors
or admini-
strators pay-
ing costs.

Generally, executors or administrators plaintiffs pay no costs : but if an executor or administrator files a bill, and does not proceed to hearing, the defendant will dismiss the bill with costs.

Security for
costs,

When plaintiff lives out of the jurisdiction, the Court will upon defendant's request oblige him to give security to answer costs : there must be an affidavit thereof, and motion made by Counsel after defendant has appeared. The bond is to be taken by the Registrar, and is entered into by the plaintiff and his security to the C. J. in £100. penalty. *Stavely v. Griffiths. Pool, 21st March, 1737.*

But not
fresh secu-
rity on sup-
plemental
bill.

Plaintiff lived out of the jurisdiction and gave security to pay costs, and afterwards brought a supplemental bill, and then defendant moved that the plaintiff should give a fresh security : but the Court held the first security sufficient, the supplemental bill being part of the said cause in which security was given.

Taxing
costs.

For taxing costs, the way is to meet before the

Attornies in Chancery ; if they cannot agree, the Registrar does it.

A Clerk in court is intitled to be paid his costs out of the fund in court, before it is paid over to the Solicitor of the party intitled to the fund. *Kenyon v. Sutton and others, April 6, 1792.*

Clerk in court intitled to costs out of fund in court.

§ 4.

Execution.

WHEN a cause is heard, then the Attorney on whose side the decree is pronounced draws up the decretal order which is to be filed with the Registrar ; and thereupon a writ of execution of the decree, which is to be drawn by the Attorney and settled by the Marshal, and the party against whom the decree is, must be served with it personally if he be thereby to do any act. Sometimes upon cause shewn by affidavit, the Court will order service at the house to be good service. *Jones v. Jones, and Jones v. Parry, Wrexham, Apr. 1737.*

Decretal order how executed.

Signed. All decretal orders are to be signed by one of the Counsel in the cause, the Registrar, and the Attorney.

Service of writ of execution or exemplification of decree. After the decree, the party against whom the decree is, shall not be obliged to pay any costs or do any act in the decretal order mentioned, unless he be served with a writ under seal of the court, called breve de executione ordinis, or the exemplification of the decree : which service ought to be personal by shewing the party the writ or exemplification under seal, and giving a true copy thereof, and making demand of the money or performance of the thing decreed.

How to enforce execution of writings. If the party against whom the decree is made be thereby ordered to execute any deed or conveyance, then there ought to be writings ready ingrossed, pursuant to the decree, with labels and wax thereto affixed, and tendered to the party to seal and execute the same at the time of service : and on oath made of the refusal on such service, an attachment on motion will be granted.

If a decree is made nisi causa, the person against whom it is made must be served with a copy of the decree on double 6d. stamp, and under seal (as the attachments are) before the decree can be made absolute. *Rutbin, 1724.*

Service of
decree nisi.

Order nisi made by the Court, upon its own observation, that a Solicitor be struck off the roll for personal misconduct in departing from the Great Sessions without leave or notice, to the delay of executing a decree whereto he was a necessary party, after having been present at a motion for compelling him to execute the same:—Ordered also, That service of this very order at his dwelling house be good service. *Kenyon v. Sutton and others, April 6, 1792.*

Solicitor
struck off
the roll for
personal
misconduct.

If an estate be decreed to be sold before the Registrar to the best bidder, and A. B. be reported and confirmed the best bidder, and afterwards dies, his heir if it be a real estate, or his executor if it be a chattel, shall have the benefit of the report, and be intitled to have a conveyance of the estate on payment of the money for which the deceased is reported the best bidder; for he has in equity a

Benefit of
report exe-
cuted to the
representa-
tive or heir
of the best
bidder.

title which the Court of Chancery will carry into execution; and otherwise the party has no recompence for the loss in providing the money.

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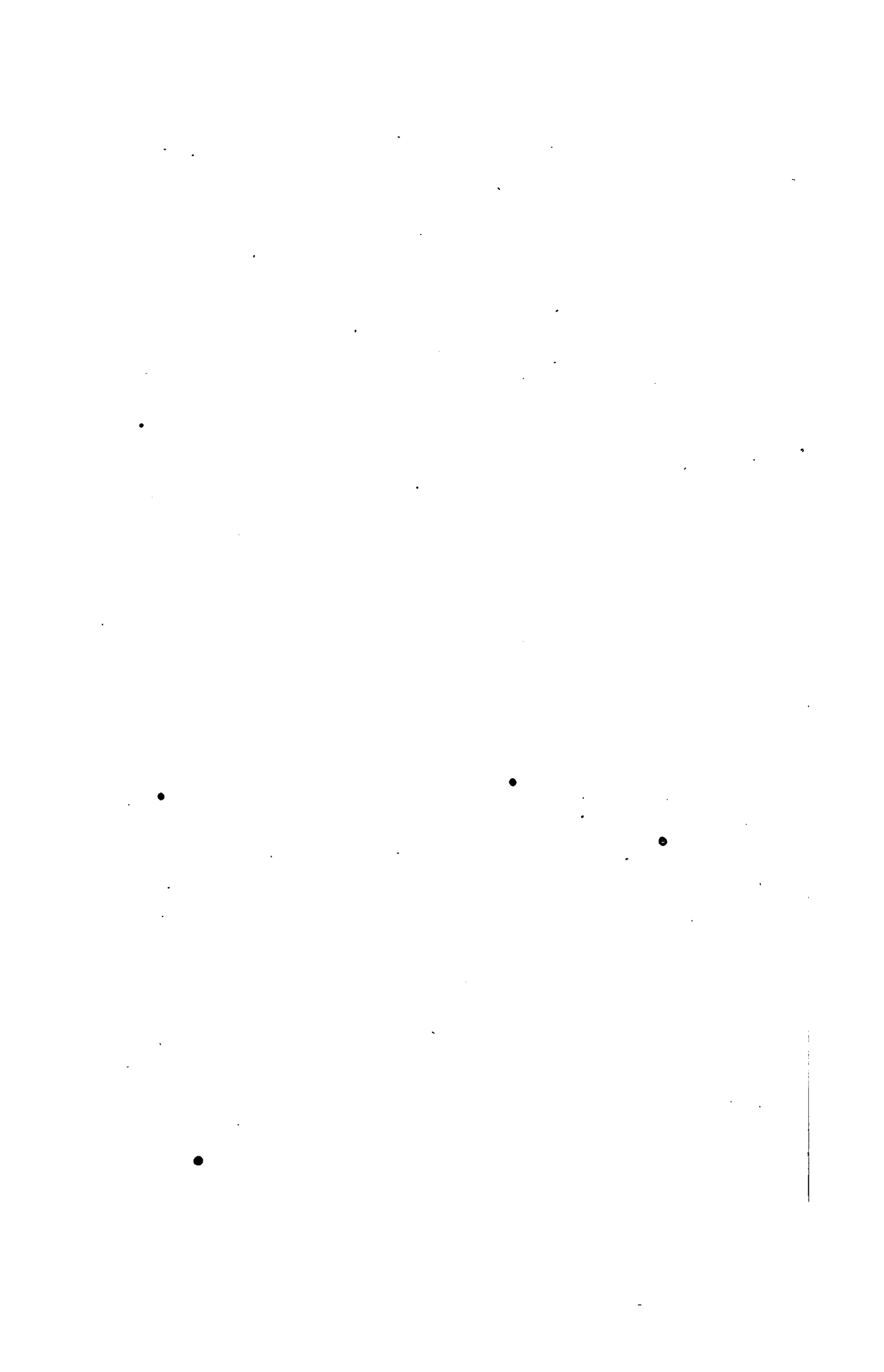
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